140-687

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1888.

No. ~~981~~. 563 260

WARREN LELAND, JR., PLAINTIFF IN ERROR,

vs.

THE CENTRAL NATIONAL BANK OF THE CITY OF NEW YORK.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEW JERSEY.

FILED OCTOBER 19, 1887.

SUPREME COURT OF THE UNITED STATES.

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1 Know all men by these presents that we, Warren Leland, Jr., of Long Branch; William McMahon, of Rahway, New Jersey, and William W. Conover, of the town of Red Bank, in the county of Monmouth and State of New Jersey, are held and firmly bound unto The Central National Bank of the City of New York, body corporate, in the sum of fifteen thousand dollars, lawful money of the United States of America, to be paid to the said The Central National Bank of the City of New York or to its certain attorney or assigns; to which payment, well and truly to be made, we bind ourselves, our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated the twenty-sixth day of October, in the year of our Lord one thousand eight hundred and eighty-six.

Whereas the above-bounden Warren Leland, Jr., hath prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the suit of The Central National Bank of the City of New York, body corporate aforesaid, plaintiff, against said Warren Leland, Jr., defendant, by the circuit court of the United States for the district of New Jersey:

Now, therefore, the condition of this obligation is such that if the above-named Warren Leland, Jr., shall prosecute his said writ of error to effect and answer all costs and damages if he shall not make good his plea, then this obligation to be void; otherwise to remain in full force and virtue.

WARREN LELAND, JR. [L. S.]

2 WM. McMAHON. [L. S.]

WILLIAM W. CONOVER. [L. S.]

Signed, sealed, and delivered in the presence of—
R. ALLEN, JR.

The word "not" first interlined before execution.

United States Circuit Court for the District of New Jersey.

THE CENTRAL NATIONAL BANK OF THE CITY OF NEW YORK, Body Corporate, Pl't'ff,

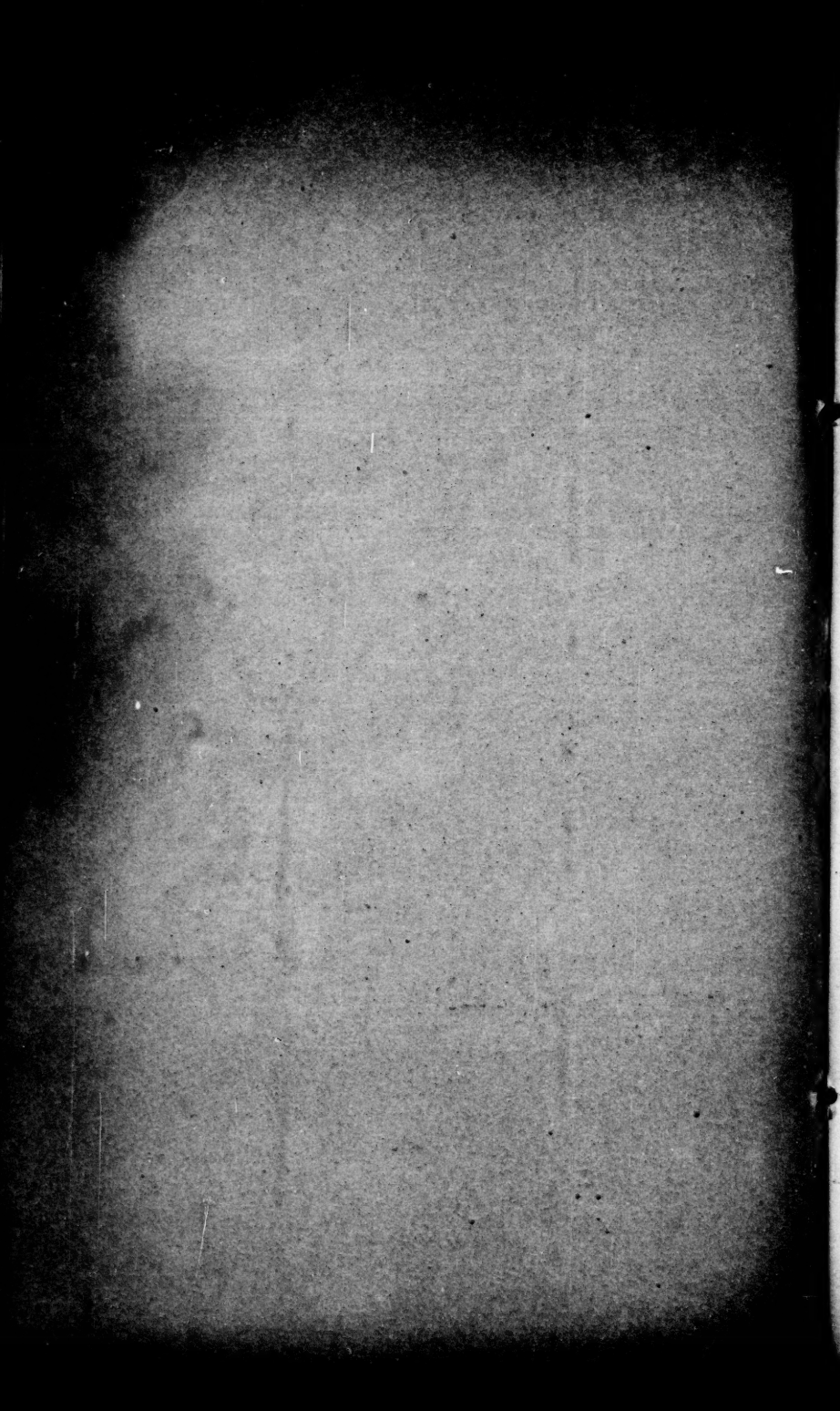
and

WARREN LELAND, Jr., Def't.

Action *on* law.

William W. Conover, named in the annexed bond, being duly sworn, on his oath says that he is a resident of the county of Monmouth, in the State of New Jersey, and owns lands and real estate at Red Bank and elsewhere in said county worth at least twenty thousand dollars over and above and free of all encumbrances, and that he is worth at least twenty thousand dollars free of all debt.

WILLIAM W. CONOVER.



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Sealed with our seals and dated the twenty-sixth day of October, in the year of our Lord one thousand eight hundred and eighty-six.

Whereas the above-bounden Warren Leland, Jr., hath prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the suit of The Central National Bank of the City of New York, body corporate aforesaid, plaintiff, against said Warren Leland, Jr., defendant, by the circuit court of the United States for the district of New Jersey:

Now, therefore, the condition of this obligation is such that if the above-named Warren Leland, Jr., shall prosecute his said writ of error to effect and answer all costs and damages if he shall not make good his plea, then this obligation to be void; otherwise to remain in full force and virtue.

WARREN LELAND, JR. [L. S.]
2 WM. McMAHON. [L. S.]
WILLIAM W. CONOVER. [L. S.]

Signed, sealed, and delivered in the presence of—
R. ALLEN, JR.

The word "not" first interlined before execution.

United States Circuit Court for the District of New Jersey.

THE CENTRAL NATIONAL BANK OF THE CITY OF NEW YORK, Body Corporate, Pl't'ff,

and

WARREN LELAND, Jr., Def't.

Action *on* law.

William W. Conover, named in the annexed bond, being duly sworn, on his oath says that he is a resident of the county of Monmouth, in the State of New Jersey, and owns lands and real estate at Red Bank and elsewhere in said county worth at least twenty thousand dollars over and above and free of all encumbrances, and that he is worth at least twenty thousand dollars free of all debt.

WILLIAM W. CONOVER.

Sworn & subscribed to this second day of November, A. D. 1886, before—

[L. S.] D. H. APPLEGATE,
Notary Public, of N. J.

3 Circuit Court of the United States for the District of New Jersey.

THE CENTRAL NATIONAL BANK OF THE CITY OF NEW YORK, Body Corporate,

vs.

WARREN LELAND, Jr., Def't.

Action at Law.

William McMahon, named in the annexed bond, being duly sworn, on his oath says that he is a resident at Rahway, in the county of Union, in the State of New Jersey, and that he owns land and real estate in said county of Union, and that he is worth in property free of all debts at least twenty-five thousand dollars.

WM. McMAHON.

Sworn and subscribed to this second day of November, A. D. 1886, before me, at Rahway, Union Co., N. J.

[L. S.] JAMES H. DURAND,
Notary Public.

(Endorsed:) Bond. The Central National Bank of the City of New York *vs.* Warren Leland, Jr. Dated Oct. 26, 1886. Approved Nov. 9, 1886. L. E. Wales, J.

4 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the judges of the circuit court of the United States for the district of New Jersey, Greeting:

Because in the records and proceedings and also in the rendition of the judgment of a plea which is in the said circuit court, before you, between The Central National Bank of the City of New York, plaintiff, and Warren Leland, Jr., defendant therein, a manifest error hath happened, to the great damage of said Warren Leland, Jr., as by his complaint appears, we, being willing that the errors, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you that, if judgment be therein given, *that*, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things
4½ concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the second Monday of October, A. D. eighteen hundred and eighty-seven, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being in-

spected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the ninth day of November, A. D. eighteen hundred and eighty-six.

[The Seal of the U. S. Circuit Court, Dist. of New Jersey.]

S. D. OLIPHANT, *Clerk.*

R. ALLEN, JR.,
Attorney of Plaintiff in Error.

4¾ [Endorsed:] 6-12. In the Supreme Court of the United States. Warren Leland, Jr., *vs.* The Central National Bank of the City of New York, body corporate, def't in error. Writ of error. Returnable second Monday of October, 1887. R. Allen, Jr., att'y of pl'ff in error. Allowed November 9, 1886. L. E. Wales, J.

5 UNITED STATES OF AMERICA, *ss:*

To The Central National Bank of the City of New York, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the district of New Jersey, wherein Warren Leland, Jr., is plaintiff and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Leonard E. Wales, a judge of the district court of the United States for the district of New Jersey and *ex officio* a judge of said circuit court, this ninth day of November, in the year of our Lord eighteen hundred and eighty-six.

LEONARD E. WALES, *J.*

[Endorsed:] 6–12. United States circuit court, district of New Jersey. Warren Leland, Jr., plaintiff in error, *vs.* The Central National Bank of the City of New York, defendants in error. Citation. R. Allen, Jr., att'y of pl't'ff in error.

6 UNITED STATES OF AMERICA, *ss:*

To The Central National Bank of the City of New York, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the district of New Jersey, wherein Warren Leland, Jr., is plaintiff and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Leonard E. Wales, a judge of the district court of the United States for the district of New Jersey and *ex officio* a judge of said circuit court, this ninth day of November, in the year of our Lord eighteen hundred and eighty-six.

LEONARD E. WALES, *J.*

6½ [Endorsed:] 6–12. United States circuit court, district of New Jersey. Warren Leland, Jr., plaintiff in error, *vs.* The Central National Bank of the City of New York, defendants in error. Citation. R. Allen, Jr., att'y of pl't'ff in error. Service acknowledged Nov. 13, '86.

A certified copy of the citation left with me and service of the citation, of which the within is a copy, acknowledged on the defendant in error within named.

Nov. 13, 1886.

JNO. LINN,
Att'y of Def't in Error.

7 United States Circuit Court, District of New Jersey.

THE CENTRAL NATIONAL BANK OF THE CITY OF NEW YORK
vs.
WARREN LELAND, Jr.

In case. Judgment.

John Linn, attorney.

As yet of the first day of September, eighteen hundred and eighty-five.

Witness W. McKennan, circuit judge.

S. D. OLIPHANT, *Clerk.*

UNITED STATES OF AMERICA, *District of New Jersey,* } *ss:*

8 New Jersey Supreme Court, of the first day of September, eighteen hundred and eighty-five.

MONMOUTH COUNTY, *ss:*

Warren Leland, Jr., the defendant in this suit, was summoned to answer unto The Central National Bank of the City of New York, the plaintiff therein, of a plea of trespass on the case, &c.

And thereupon the said plaintiff, by John Linn, its attorney, complains—

For that whereas the said defendant heretofore, to wit, on the fourteenth day of January, eighteen hundred and eighty, in the city of New York, to wit, in the county of Monmouth aforesaid, made his promissory note in writing, bearing date the day and year last aforesaid, whereby he promised to pay, three months after the date thereof, to the order of John Fitch, one thousand dollars, at The Central

National Bank, for value received, and then and there delivered the said promissory note to the said John Fitch, who then and three duly endorsed and delivered the same to the plaintiff, and the said defendant then and there promised the plaintiff to pay the said note according to the tenor and effect thereof.

And for that whereas also the said defendant afterwards, to wit, on the fifth day of March, eighteen hundred and eighty-one, in the city of New York, to wit, in the county of Monmouth aforesaid, made his certain other promissory note in writing, bearing
9 date the day and year last aforesaid, whereby he promised to pay, three months after the date thereof, to the order of John Fitch, sixteen hundred and sixteen dollars and ninety-seven cents, at the Central National Bank, N. Y., for value received, and then and there delivered the last said note to said John Fitch, who then and there duly endorsed and delivered the same to the plaintiff, and the said defendant then and there promised the plaintiff to pay the last said note according to the tenor and effect thereof.

And for that whereas also the said defendant afterwards, to wit, on the first day of August, eighteen hundred and eighty-five, at the city of New York, to wit, in the county of Monmouth aforesaid, was indebted to said plaintiff in the sum of three thousand dollars for money lent by the plaintiff to the defendant at his request, and in three thousand dollars for money paid by the plaintiff for the use of the defendant at his request, and in three thousand dollars for money received by the defendant for the use of the plaintiff, and in three thousand dollars for interest for the forbearance by the plaintiff at the defendant's request of moneys due and owing by the defendant to the plaintiff, and in three thousand dollars for money found to be due from the defendant to the plaintiff on an account stated between them; and the said defendant afterwards, to wit, on the day and year last aforesaid, in the county of Monmouth aforesaid, in consideration of the last-mentioned premises, respectively, then and there promised the said plaintiff to pay it the last-mentioned several moneys, respectively, on request.

10 Yet the said defendant has disregarded his said promises and has not paid the said several sums of money or any or either of them, although often requested so to do, to said plaintiff's damage of three thousand dollars, and therefore it brings this suit, &c.

JNO. LINN,
Pl'tff's Att'y.

(Endorsed:) New Jersey supreme court, Monmouth county. The Central National Bank of the City of New York *vs.* Warren Leland, Jr. In case. Declaration. Jno. Linn, att'y. Filed Sept. 19, 1885.

11 *Plea.*

New Jersey Supreme Court, of the first day of September, A. D. eighteen hundred and eighty-five.

THE CENTRAL NATIONAL BANK OF THE CITY OF NEW YORK, Plaintiff,
against
WARREN LELAND, Jr., Defendant.

In case.

And the said Warren Leland, Jr., defendant in this suit, by Robert Allen, Jr., his attorney, comes and defends the wrong and injury when, &c., and says that he did not undertake and promise in manner and form as the said plaintiff in this suit has above thereof declared against the said defendant, and of this he puts himself upon the country; and the said plaintiff likewise, &c.

And the said defendant, by leave of the court here for this purpose had and obtained, according to the form of the statute in such case made and provided, for further plea in this behalf, says that the said plaintiff *his* action aforesaid against the said defendant ought not to have or maintain, because the said defendant says that after the supposed promises and undertakings of the said defendant and before the commencement of the said action of the said plaintiff against the said defendant in this behalf, to wit, on the — day of ——, in the year of our Lord one thousand eight hundred and eighty-five,

12 the said defendant paid to the said plaintiff the said several sums of money in the declaration of the said plaintiff mentioned, and this the said defendant is ready to verify.

Wherefore the said defendant prays judgment whether the said plaintiff *his* action aforesaid thereof against the said defendant ought to have or maintain, &c.

R. ALLEN, JR.,
Att'y for Defendant.

Supreme Court of the State of New Jersey, of the first day of September, A. D. eighteen hundred and eighty-five.

THE CENTRAL NATIONAL BANK OF THE CITY OF NEW YORK, Plaintiff,
against
WARREN LELAND, Jr., Defendant.

In case.

Please to take notice that the said defendant, at the trial of the above cause, will insist upon and give in evidence under the general issue above pleaded that the said plaintiff, at the time of the commencement of the action aforesaid against the said defendant, was and still is indebted unto him in the sum of forty-five hundred dollars, lawful money of the United States of America, for divers goods,

wares, and merchandise before that time sold and delivered
13 by the said defendant to the said plaintiff and at the special instance and request of the said plaintiff, and in the further sum of forty-five hundred dollars, of like lawful money, for the work and labor, care and diligence, of the said defendant by the said defendant and his *its* servants before that time done, performed, and bestowed in and about the business of the said plaintiff and for the said plaintiff and at *his* its like request, and in the further sum of forty-five hundred dollars, of like lawful money, for money before that time lent and advanced by the said defendant to the said plaintiff and at the like request of the said plaintiff, and for other money by the said defendant before that time paid, laid out, and expended for the said plaintiff and at the like request of the said plaintiff, and for other money by the said plaintiff before that time had and received to and for the use of the said defendant; and also that the said plaintiff, before the commencement of this action, accounted together with the said defendant of and concerning the said demand of the said plaintiff against the said defendant, and also of and concerning divers other sums of money and accounts between the said plaintiff and the said defendant, and upon such accounting the said plaintiff was found to be in arrear and indebted to the said defendant in the further sum of forty-five hundred dollars of like lawful money, and in the further sum of forty-five hundred dollars for forty-five shares of the capital stock of the Long Branch Ocean Pier Company sold and delivered to the said plaintiff by the said defendant at said plaintiff's request, and in the further sum of forty-
14 five hundred dollars for the proceeds of forty-five shares of the capital stock of the Long Branch Ocean Pier Company belonging to the defendant and had and received by the plaintiff of the personal property of the defendant, and collected by the plaintiff with the full knowledge on the part of the plaintiff that the said proceeds were — all the times of the moneys of the defendant, and retained yet by said plaintiff.

And the defendant will also give in evidence on the trial of said cause that John Fitch, named in the plaintiff's declaration therein, had and received of the defendant, after the date of said notes in said declaration mentioned, three thousand dollars at plaintiff's request, with the plaintiff's knowledge and sanction, and for said plaintiff and at the disposal of said plaintiff, and also that said John Fitch had and received of the defendant, with the knowledge and request of the plaintiff, thirty shares of the capital stock of the Long Branch Ocean Pier Company of the personal property of the defendant, which said thirty shares, of one hundred dollars each *share, and* said John Fitch, after the date of said notes, disposed of, at the request of said plaintiff, to the amount of three thousand dollars, for said plaintiff and to the use of said plaintiff, and which said proceeds and moneys have not been accounted for to said defendant by said plaintiff at any time.

All which moneys were and are due to this defendant from the plaintiff and the plaintiff then and there at all times promised
15 to pay the defendant; which said several sums of money, or

so much thereof as will be sufficient for that purpose, the said defendant will set off against the demand of the said plaintiff to be proved at the trial and have the balance certified in his favor.

Yours, &c., R. ALLEN, JR.,
Att'y for Def't.

Dated the 26th day of October, 1885.

To John Linn, Esq., att'y for plaintiff.

NEW JERSEY, } ss:
County of Monmouth, }

New Jersey Supreme Court, of the first day of September, A. D. eighteen hundred and eighty-five.

THE CENTRAL NATIONAL BANK OF NEW YORK, Plaintiff,
against
WARREN LELAND, Jr., Defendant.

In case.

Warren Leland, Jr., of said county, defendant above named, being duly sworn according to law, on his oath says that his plea- in the above-stated cause are not either of them intended for the purpose of delay, and that he, the affiant, the defendant, verily believes that he hath a just and legal defence to said action on the merits of the case.

WARREN LELAND, JR.

Sworn and subscribed to this twenty-sixth day of October,
16 A. D. eighteen hundred and eighty-five, before me—
W. A. VAN SHOICK,
Justice of the Peace of the County of Monmouth, New Jersey.

(Endorsed:) New Jersey supreme court. The Central National Bank of the City of New York, pl'ff, *vs.* Warren Leland, Jr., def't. In case. Plea and affidavit and notice. R. Allen, Jr., att'y. Filed Oct. 27, 1885.

Replication.

New Jersey Supreme Court.

THE CENTRAL NATIONAL BANK OF THE CITY OF NEW YORK
vs.
WARREN LELAND, JR.

In case.

And the said plaintiff, as to the plea of the said defendant by him first above pleaded, and whereof he hath put himself upon the country, doth the like.

And the said plaintiff, as to the plea of the said defendant by him secondly above pleaded, saith that the said plaintiff, by reason of anything in that plea alleged, ought not to be debarred from
17 having and maintaining its aforesaid action thereof against the said defendant, because it says that the said defendant did not pay to the said plaintiff the said several sums of money in the said declaration mentioned in manner and form as the said defendant hath above in his said second plea in that behalf alleged, and this the said plaintiff prays may be inquired of by the country; and the defendant doth the like.

JNO. LINN,
Pl'tff's Att'y.

(Endorsed:) New Jersey supreme court. The Central National Bank of the city of New York *vs.* Warren Leland, Jr. In case. Replication. John Linn, att'y. Filed Nov. 9th, 1885.

New Jersey Supreme Court, of the first day of September, in the year of our Lord one thousand eight hundred and eighty-five.

THE CENTRAL NATIONAL BANK OF THE CITY OF NEW YORK, Pl'tff,
vs.
WARREN LELAND, JR., Def't.

In case.

To the said supreme court:

Your petitioner respectfully shows to this honorable court
18 that the matter and amount in dispute in the above-entitled suit exceeds, exclusive of costs, the sum or value of five hundred dollars.

That the controversy in said suit is between a citizen of the State of New York and a citizen of the State of New Jersey, and that the petitioner, Warren Leland, Jr., was at the time of the commencement of this suit and since then and still is now a citizen resident of the State of New Jersey, and that the said The Central National Bank of the City of New York is a corporation of the State of New York and was such at the time of the commencement of this suit, and was then and still is now a citizen resident of the State of New York.

Your petitioner states that in said suit above mentioned there is a controversy which is wholly between citizens of different States and which can be fully determined as between them, to wit, a controversy between the petitioner and the said The Central National Bank of the City of New York, body corporate aforesaid; and your petitioner offers herewith a bond, with good and sufficient surety, for his entering into said circuit court of the United States, on the first day of its next session, a copy of the record in this suit and for paying all costs that may be awarded by said circuit court if the said court shall hold that this suit was wrongfully or improperly removed thereto.

And he prays this honorable court to proceed no further therein, except to make the order of removal required by law and to
19 accept the said surety and bond and to cause the record herein to be removed into said circuit court of the United States in and for the district of New Jersey; and he will ever pray.

WARREN LELAND, JR.

R. ALLEN, JR.,
Att'y of Petitioner.

NEW JERSEY, *ss:*

Warren Leland, Jr., above-named petitioner, being duly sworn, on his oath says that he has read the foregoing petition and knows the contents thereof, and that the statements and allegations therein contained are true, as he verily believes.

WARREN LELAND, JR.

Sworn and subscribed to this eighteenth day of January, A. D. 1886, before me—

R. F. STOCKTON, *M. C. C.*

(Endorsed:) New Jersey supreme court. The Central National Bank of the City of New York *vs.* Warren Leland, Jr. In case. Petition for removal. R. Allen, Jr., att'y for petitioner. Filed Jan'y 18th, 1886. Benj. F. Lee, clerk.

Know all men by these presents that I, Warren Leland, Jr., of Long Branch, county of Monmouth, in the State of New Jersey, as principal, and Andrew Newman and Thorndike Saunders, of the county of Monmouth, State of New Jersey, as sureties, are
20 held and firmly bound unto the Central National Bank of the City of New York (body corporate), of the city, county, and State of New York, in the penal sum of five hundred dollars, lawful money of the United States of America, to be paid to the said The Central National Bank of the City of New York (body corporate aforesaid); for which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals. Dated the sixteenth day of January, A. D. eighteen hundred and eighty-six.

Yet upon these conditions: The said Warren Leland, Jr., having petitioned the supreme court of the State of New Jersey for the removal of a certain cause therein depending, wherein the said The Central National Bank of the City of New York is plaintiff and said Warren Leland, Jr., is defendant in an action on the case upon promises, to the circuit court of the United States in and for the district of the State of New Jersey:

Now, if the said Warren Leland, Jr., your petitioner, shall enter in the said circuit court of the United States on the first day of its next session a copy of the record in said suit, and shall well and truly pay all costs that may be awarded by said circuit court of the

United States if said circuit court of the United States shall hold that said suit was wrongfully or improperly removed thereto, then this obligation to be void; otherwise to be in full force and virtue.

21 WARREN LELAND, JR. [L. S.]
ANDREW NEWMAN. [L. S.]
THORNDIKE SAUNDERS. [L. S.]

Signed, sealed, and executed in the presence of—
WARREN LELAND.

NEW JERSEY, *ss:*

Warren Leland, Jr., mentioned in the above bond, being duly sworn, on his oath says that Andrew Newman and Thorndike Saunders, the sureties named in the foregoing bond, are residents and land-owners in the State of New Jersey; that he has known said Newman and said Saunders for several years past intimately, and that he, said Leland, and said Newman and said Saunders are each worth the sum of five hundred dollars, over and above all their debts and liabilities and exclusive of property by law exempt from execution, and have property in the State of New Jersey liable to execution of the value of more than five hundred dollars.

WARREN LELAND, JR.

Sworn and subscribed to this 18th day of January, 1886, before me—

R. F. STOCKTON, *M. C. C.*

(Endorsed:) New Jersey supreme court. The Central National Bank of the City of New York *vs.* Warren Leland, Jr. In case. Bond for removal. R. Allen, Jr., att'y. Filed Jan'y 18, 1886. Benj. F. Lee, cl'k.

22 I, Benj. F. Lee, clerk of the supreme court of the State of New Jersey, do certify that the foregoing is a true copy of the entire proceedings in above-stated cause as the same remains on file in my office.

In testimony whereof I have hereto set my hand and the seal of said court, at Trenton, this eighteenth day of January, A. D. eighteen hundred and eighty-six.

[L. S.] BENJ. F. LEE, *Cl'k.*

(Endorsed:) New Jersey supreme court. The Central National Bank of the City of New York *vs.* Warren Leland Jr. In case. Copy of papers. John Linn, att'y. Filed Jan. 19, 1886. S. D. Oliphant, clerk.

23 U. S. Circuit Court, Dist. of New Jersey.

THE CENTRAL NATIONAL BANK OF THE CITY OF NEW YORK
vs.
WARREN LELAND, Jr.

In case.

It is hereby stipulated and agreed that said plaintiffs may amend their declaration in this suit, without special application to the court for that purpose, by adding another count upon a promissory note bearing date October 27th, 1881, of which the following is a copy:

$3,000.00. LONG BRANCH, *Oct. 27th*, 1881.

Three months after date I promise to pay to the order of John Fitch three thousand dollars, at the Central National Bank, N. Y., value rec'ed.

WARREN LELAND, JR.

And it is agreed that said declaration may be considered as amended to that effect, and the pleas already filed shall apply to the same in the same manner as if such count had been inserted originally in said declaration, and defendant may — as he deems best.

Feb. 6, 1886.

JNO. LINN, *Pl't'ff's Att'y.*
ROBERT ALLEN, JR.,
Att'y of Def't.

(Endorsed:) U. S. circuit court, dist. of New Jersey. In case. The Central National Bank of the City of New York *vs.* Warren Leland, Jr. Stipulation as to amendment. Jno. Linn, pl't'ff's att'y. Filed Feb. 13, 1886. S. D. Oliphant, clerk.

24 MONMOUTH COUNTY, *ss:*

New Jersey Supreme Court, of the first day of September, eighteen hundred and eighty-five.

Warren Leland, Jr., the defendant in this suit, was summoned to answer unto The Central National Bank of the City of New York, the plaintiff therein, of a plea of trespass on the case, &c.; and thereupon the said plaintiff, by John Linn, its attorney, complains for that whereas the said defendant heretofore, to wit, on the fourteenth day of January, eighteen hundred and eighty, in the city of New York, to wit, in the county of Monmouth aforesaid, made his promissory note in writing, bearing date the day and year last aforesaid, whereby he promised to pay, three months after the date thereof, to the order of John Fitch, one thousand dollars, at the Central National Bank, for value received, and then and there delivered the said promissory note to the said John Fitch, who then and there

duly endorsed and delivered the same to the plaintiff, and the said defendant then and there promised the plaintiff to pay the said note according to the tenor and effect thereof.

And for that whereas also the said defendant afterwards, to wit, on the fifth day of March, eighteen hundred and eighty-one, in the city of New York, to wit, in the county of Monmouth aforesaid, made his certain other promissory note in writing, bearing—
25 the day and year last aforesaid, whereby he promised to pay three months after the date thereof, to the order of John Fitch, sixteen hundred and sixteen dollars and ninety-seven cents, at the Central National Bank, N. Y., for value received, and then and there delivered the last said note to said John Fitch, who then and there duly indorsed and delivered the same to the plaintiffs, and the said defendant then and there promised the plaintiff to pay the last said note according to the tenor and effect thereof.

And for that whereas also the said defendant heretofore, to wit, on the twenty-seventh day of October, eighteen hundred and eighty-one, at the city of New York, to wit, in the county of Monmouth aforesaid, made his certain other promissory note in writing, bearing date the day and year last aforesaid, whereby he promised to pay, three months after the date thereof, to the order of John Fitch, three thousand dollars, at the Central National Bank, N. Y., for value received, and then and there delivered last said note to said John Fitch, who then and there duly indorsed and delivered the same to said plaintiff, and the said defendant then and there promised said plaintiffs to pay the amount of last said promissory note according to the tenor and effect thereof.

And for that whereas also the said defendant afterwards, to wit, on the first day of August, eighteen hundred and eighty-five, at the city of New York, to wit, in the county of Monmouth aforesaid,
26 was indebted to said plaintiff in the sum of three thousand dollars for money lent by the plaintiff to the defendant, at his request; and in three thousand dollars for money paid by the plaintiff for the use of the defendant, at his request; and in three thousand dollars for money received by the defendant for the use of the plaintiff; and in three thousand dollars for interest for the forbearance by the plaintiff, at the defendant's request, of moneys due and owing by the defendant to the plaintiff; and in three thousand dollars for money found to be due from the defendant to the plaintiff on an account stated between them.

And the said defendant afterwards, to wit, on the day and year last aforesaid, in the county of Monmouth aforesaid, in consideration of the last-mentioned premises, respectively, then and there promised the said plaintiff to pay it the last-mentioned several moneys, respectively, in request.

Yet the said defendant has disregarded his said promises and has not paid the said several sums of money or any or either of them, although often requested so to do, to said plaintiff's damage of eight thousand dollars, and therefore it brings this suit, &c.

JNO. LINN,
Pl'ff's Att'y.

(Endorsed:) U. S. circuit court, district of N. Y. The Central National Bank of the City of New York *vs.* Warren Leland, Jr. Declaration as amended. John Linn, att'y. Filed Feb. 13, 1886. S. D. Oliphant, clerk.

27 United States Circuit Court, District of New Jersey. In Equity.

THE CENTRAL NATIONAL BANK OF THE CITY OF NEW YORK
vs.
WARREN LELAND, Jr.

THE CENTRAL NATIONAL BANK OF THE CITY OF NEW YORK, Compl't,
vs.
WARREN LELAND, Jr., Def't.

On contract.

It is hereby stipulated and agreed that the above-stated suits shall be heard together as one suit before the court without a jury, and shall be tried and heard upon the evidence already taken by the parties and that which may be taken before the hearing, and such testimony, so far as the same may be legal and competent, may be read upon such hearing and applied to either case, so far as the same may be applicable, without producing the witnesses before the court, and each party may object to the legality or competency or relevancy of any of said testimony, whether such objections were made at the time of taking said testimony or not.

March 17, 1886.

JNO. LINN,
Att'y & Sol. of Pl'ff & Compl't.
R. ALLEN, JR.,
Att'y & Sol. of Def't.

Witness:
WARREN LELAND, JR.

(Endorsed:) U. S. circuit court, district of N. J. The Central Nat. Bank of the City of New York *vs.* Warren Leland, Jr. On contract. Same *vs.* Same. In equity. Stipulation. Filed M'ch 23, 1886. S. D. Oliphant, clerk.

28 Afterwards—that is to say, on the twenty-ninth day of September, in the year eighteen hundred and eighty-six—before the said circuit court at Trenton, came as well the within-named plaintiffs as the within-named defendant, by their respective attornies within named, and produced before the said court their respective proofs upon the said issues; and the said court, having heard the same and the argument of counsel thereon, retains the cause for advisement until the twelfth day of October, 1886, and on that day the following finding of facts was made and filed by the court as the result of the evidence offered upon the trial of said issues:

Circuit Court, Dist. of New Jersey.

THE CENTRAL NATIONAL BANK OF THE CITY OF NEW YORK

vs.

WARREN LELAND, Jr.

Action at law.

Before McKennan, circuit judge, and Wales, J.

Per curiam:

The parties having, by written stipulation, waived a jury and the cause having been heard by the court upon the evidence submitted on both sides and the arguments of the respective counsel of the parties, the court find in favor of the plaintiffs and against the defendant in the sum of seven thousand and twenty-nine dol-
29 lars fifty-two cents ($7,029.52), and order judgment to be entered accordingly.

Oct. 10, 1886.

(Filed October 12, 1886.)

And at the September term, upon the day last aforesaid, it is, upon the said facts found as aforesaid, by the said court considered that the said defendant did undertake and promise in manner and form as the said plaintiffs have in their said declaration alleged; and they assess the damages of the said plaintiffs by reason of the not performing said promises and undertakings, over and above the costs and charges by them about their suit in this behalf expended, at the sum of seven thousand and twenty-nine dollars and fifty-two cents, and for those costs and charges at thirty-two dollars and eighty-nine cents.

And it is further considered that the said plaintiffs do recover against the said defendant his damages aforesaid, in form aforesaid, assessed to the sum of seven thousand and twenty-nine dollars and fifty-two cents, and also thirty-two dollars and eighty-nine cents for their costs and charges by the court now here adjudged to the said plaintiffs and with their assent, which said damages, costs, and charges in the whole amount to seven thousand and sixty-two dollars and forty-one cents; and the said defendant in mercy.

Judgment signed this twelfth day of October, A. D. 1886.

W. McKENNAN, *Cir. J.*

30 United States Circuit Court, District of New Jersey.

THE CENTRAL NATIONAL BANK OF THE CITY OF NEW YORK, Complainant,

vs.

WARREN LELAND, Jr., and Others, Defendants.

On bill to foreclose.

JERSEY CITY, N. J., *March* 5, 1886.

Testimony taken in the above case before Clarence Linn, a notary public for New Jersey, at the office of John Linn, No. 47 Montgomery street, Jersey City, on this 5th day of March, 1886, at ten o'clock in the forenoon, upon due notice, in behalf of the complainant, in the presence of John Linn, solicitor for the complainant, and Robert Allen, Jr., solicitor for the defendant, Warren Leland, Jr.

WILLIAM A. WHEELOCK, being duly sworn, was examined and testified as follows:

Direct examination by Mr. LINN:

Q. Were you formerly president of the Central National Bank of the City of New York?

A. I was.

Q. And are you still a director in that bank?

A. I am.

Q. Are you acquainted with Warren Leland, Jr.?

A. I am, slightly.

31 Q. Have you met him in the bank building of the Central National Bank of New York?

A. I did, some years ago.

Q. Do you recollect the interview which took place between yourself and him in 1882 or 1883 in the front room of that bank building?

A. I do.

Q. Will you please state what took place between you—what was said by you and by him on that occasion?

A. Mr. Leland came into the bank; I think I was there at the time, in the front room of the bank, in the president's room, although I was not then president. He came in with Mr. Fitch, and Mr. Fitch stated that Mr. Leland wanted to speak with me in reference to obligations of his which the bank held as collateral security for an indebtedness of Mr. Fitch. It was a long time since I had had occasion to refer to them, and for that reason I said we had better go into the other room where our discount clerk was and where all the securities were, and we would investigate the matter. He went with me into the cashier's room, and I spoke to Mr. Hamilton and told him I wished he would bring out all the papers which pertained to the indebtedness of Mr. Leland which we held, including a mort-

gage, in order that we might inform Mr. Leland just exactly what we claimed and what the condition of the notes was. Mr. Hamilton brought out an envelope containing all the papers, and
32 we explained everything to Mr. Leland. He stated that his affairs with Mr. Fitch were somewhat confused, and I believe he spoke of Mr. Fitch's indebtedness to him and a counter-indebtedness, &c.; that they were very much mixed, and he wanted to see what it was necessary to do in order to release this mortgage which we held and other liabilities in the shape of notes. We made a calculation, and we finally stated to Mr. Leland just exactly what it would be necessary for him to do in order to release the mortgage and fifty shares of pier stock and certain notes which we at that time held of his which he had given to Mr. Fitch, and which, with Mr. Fitch's endorsement, we had from time to time discounted and renewed, and which Mr. Fitch stated to us was for money which he had advanced to Mr. Leland in the completion of the pier, and in some relation which they had had with each other in relation to the pier.

Counsel for defendant objects to what Mr. Fitch stated.

WITNESS (continuing): We stated at that time to Mr. Leland that it would be necessary for him to pay to the bank four thousand dollars and interest from July 16, 1882, in order to release to him the fifty shares of pier stock, the mortgage, and the three notes or the two notes which we held, and if that was done we would deliver up the mortgage and certain notes which at that time we held and the fifty shares of pier stock which originally was in the shape of receipts and certificates, but which we had afterwards
33 transferred into regular certificates of stock. As Mr. Fitch paid the money for these certificates, we had them transferred into regular certificates of stock. Mr. Leland made no objection whatever to that, and the impression upon every one of us when he left the room was——

Objected to.

The WITNESS: It seemed to be perfectly satisfactory to him—the $4,000 and interest from July 16, 1882—and a memorandum was made at the time in writing by Mr. Hamilton that Mr. Leland assented to that, and we expected——

Objected to as to memorandum unless produced.

The WITNESS: That is the state of the case, and from that time I have not seen Mr. Leland.

Any suggestion made by Mr. Fitch objected to.

Mr. WHEELOCK: I don't need any suggestions.
Mr. FITCH: I am a lawyer.
The WITNESS: I expressly stated that two or three times—that we would then surrender the notes we then held.
Q. At that time did you hold that $3,000 note?
A. I did.

Mr. ALLEN: You mean the bank?
Mr. LINN: Yes; I mean the bank.

Q. And you held the bond and mortgage for $4,500?
A. We did.
Q. And the pier stock?
A. We did.
Q. That bond and mortgage and pier stock you still hold, the bank still holds and is ready to surrender when the money
34 due upon these obligations is all paid?
A. We are.

Q. Do you know whether any other note was pledged to the bank after that—any other note made by Mr. Leland to Mr. Fitch?

A. In explaining that I will say we were continually suggesting to Mr. Fitch to make a settlement of that matter or to give us additional security, and he brought in a note to us for $1,000 of Mr. Leland's—an old note which he had in his possession—and said that that was all he could do, and he gave us this as additional collateral.

Mr. ALLEN: You mean Mr. Fitch?

A. Yes; that is the only change that was made from the time of the interview with Mr. Leland—that is the only collateral.

Q. Did you have any other interview with Mr. Warren Leland, Jr.?

A. None; no interview after that time. There may have been some remarks made during that same interview, but no interview after that day.

Cross-examination by Mr. ALLEN:

Q. You say you are a director—were you any other officer of the bank prior to that?

A. I was for fifteen years president of the bank, from 1866 to 1881, when I resigned.

Q. From 1866?
A. Yes; fifteen years.
35 Q. What part of 1881 was it—the spring, summer, or fall of 1881—when you resigned?

A. The first day of June, 1881. I resigned in January, to take effect in June.

Q. How long had you known Mr. Fitch?

A. I had known Mr. Fitch for a good many years; we will say five, six, or seven years, certainly.

Q. Prior to 1881?
A. Yes; prior to 1881.
Q. How long had he kept an account in the bank?
A. Five or six years.
Q. Quite an active account?

A. Yes; quite so for a small account; an active account for a moderate, small account.

Q. When did you first know Mr. Leland, Jr.?

A. I have known of Mr. Leland for a great many years, but I don't know that I was ever introduced to Mr. Leland until, it may

have been, that he came in when these notes were being given or renewed.

Q. While you were president?

A. While I was president.

Q. Give about the first time you were introduced to Warren Leland, Jr.

A. I couldn't tell whether I was ever introduced to him until that time. All I can recall is, I knew of him.

Q. Did Leland, Jr., have any business transactions with
36 your bank in the way of accounts?

A. Not that I am aware of, unless it was through Mr. Fitch. I can't say without referring to the books.

Q. Did he have any other business transactions with your bank except the notes that are in question?

A. Not that I am aware of. I can't recall that he did. I can't say without referring to the books. I don't remember of any transaction we had directly with Mr. Leland.

Q. Whether you had any other conversation with Warren Leland on any other subject-matter except these notes in question or the bond and mortgage in question?

A. Nothing, unless it was in the conversation brought about by what he stated to be the mixed condition of his accounts with Mr. Fitch.

Q. Can you give us the month and year when the interview took place between you and Mr. Leland?

A. I should say it was in the autumn of 1883. It may be a different time from that. I made no memorandum of it at all, because I was not there as an officer of the bank. I had been there when the notes were originally discounted for Mr. Fitch.

Q. How many notes were originally discounted for Mr. Fitch connected with Warren Leland, Jr.?

A. I can't say how many were originally discounted, but I know that we had notes that were discounted and they would become due and they would be renewed for the same amounts, and Mr.
37 Fitch apparently paid the discount on them. I will say this—I don't know whether it bears upon the question or not: I always objected to taking the notes because I didn't consider Mr. Leland as responsible as Mr. Fitch did. As to whether we had any transactions with Mr. Leland, it was not likely that we had.

Q. Did Warren Leland, Jr., deposit in your bank?

A. I don't know that he did. I don't think he ever had what would be called an account—an active account—in the bank. If he had any account there at all it was simply a temporary one, I think, in connection with this pier company, which would not be what we call a regular account. There may have been money deposited there temporarily for some purpose.

Q. What is Mr. Hamilton's first name?

A. It is Edward S., I think.

Q. What capacity in the bank has he?

A. He has been discount clerk in that bank for a great many years. He has been in the bank for twenty-two years.

Q. When was the first that you saw what is called the certificates of the pier stock; when was the first that you saw those, and who first brought them to you to the bank?

A. I can't tell you. I suppose Mr. Fitch. As they were held as collateral to the notes which we had discounted for Mr. Fitch, it is natural to infer that Mr. Fitch brought them to us. They were held as collateral.

Q. Tell us when was the first time you saw those certifi-
38 cates in the bank.

A. During the time when we were discounting those notes. I suppose it must have been 1880–'81; along there.

Q. When was the first that you saw any note in the bank presented to the bank in the capacity of a business corporation?

A. You mean of Mr. Leland's?

Q. Of Warren Leland, Jr., and of Fitch, endorser.

A. My impression is it was 1879.

Q. Do you remember the amount?

A. I don't think—whether it was $3,000—it seems to me—no, I wouldn't say without referring to the books. If I had a copy I could tell you.

Q. Was there any pier stock connected with that that last year?

A. I don't remember. I will say this, however, that it is possible that at first we may have discounted some note for Mr. Fitch or Mr. Leland, because it is no injustice to say that in the latter part of the business we had not the same confidence in his responsibility. We had in his good intentions, but not in his responsibility. We may have accepted different collateral from time to time, as we probably did. We objected to the discounting of Mr. Leland's notes from the beginning.

Q. Why did you object to discounting Mr. Leland's notes in the beginning?

39 A. Because I had an instinctive belief that Mr. Leland's paper was not such paper as we cared to have in the bank.

Q. With John Fitch's endorsement?

A. I could state what I said to Mr. Fitch, if it is desirable.

Q. No; unless Mr. Leland was present.

A. He was not present.

Q. Why did you distrust Mr. Leland's responsibility?

A. As a judge of credits, I did not consider Mr. Leland as a thoroughly responsible, reliable man.

Q. What was your reason—why?

A. I can't tell you; these things come to us intuitively. I advised Mr. Fitch against taking the paper, and told him before he got through with it he would find he had made a mistake in trusting so implicitly to that paper.

Q. Mr. Leland was not present when you said that?

A. No.

Objected to as not responsive.

Q. I ask you your reasons?

A. Yes; those are my reasons.

Q. How long had you known Mr. Leland before that?

A. I had known of him. We know of a great many men, but do not know them personally.

Q. Then, that judgment came without any knowledge of Mr. Leland personally?

A. Without any knowledge personally; yes, sir.

Q. Or without anybody's imparting to you any information?

40 A. I think that would be considered as the general impression among bankers at that time——

Q. What was Mr. Leland's business at that time?

A. What it has always been, I suppose.

Q. In New York or New Jersey, at that time?

A. There are so many Lelands. When I came into this room, unless Mr. Leland had spoken to me, I should not have known that it was Warren Leland, Jr. You can see how little I have known of him. Personally I have great regard for Mr. Leland, but business is business, and there has been no time when I should have taken Mr. Leland's paper—or the bank, either.

Q. Do you know whether Warren Leland, Jr., at the time or the occasion you now speak of, was in the hotel business in New York city or at Long Branch?

A. I have not the slightest idea. I presume he was in Long Branch because I used to hear Mr. Fitch speak of him as at Long Branch.

Q. At the time you discounted the first note of Mr. Leland do you know whether the Long Branch pier was in process of construction or in completion?

A. I do not.

Q. That was not referred to, then, in connection with this note?

A. I don't remember whether it was or not.

Q. What disposition was made of that first note when it came due?

41 A. It was renewed.

Q. At whose request?

A. As a rule, Mr. Fitch came in, I think, very often the day before, but at any rate he came just as the note matured and had that renewed and paid the discount on the new note. My impression is that the first—I don't know but Mr. Leland paid the discount on one note, but on nearly all the notes that were renewed Mr. Fitch seemed to pay the discount himself.

Q. Do you remember whether the first note was renewed by a single note of the same amount or by one or more notes of different amounts?

A. That I can't tell you unless I had a copy from Mr. Hamilton's discount book. Mr. Hamilton could give that. Anything of that kind he could state.

Q. Then, before the first note became due, do you remember whether there was another note of Warren Leland Jr.'s put in the bank by Mr. Fitch?

A. That I couldn't say without a memorandum.

Q. Do you refer to the bank books?

A. I refer to an exact copy from the discount ledger which would show precisely the dates upon which each note was discounted.

Q. You refer to the bank ledger and not to a private memorandum?

A. A copy from the discount ledger.

Q. Or any other book which the item would be in?

42 A. Certainly; the discount book. That is the official record.

Q. To whose account was the credit given for the proceeds of the notes?

A. Mr. Fitch's.

Q. The first note and all the notes of Warren Leland, Jr.?

A. Mr. Fitch's.

Q. When did you first see the bond and mortgage in question?

A. That I don't remember, when it was first brought to the bank. My impression is it was at the when there was a note discounted. It was brought there as a security and it was afterwards transferred to the bank.

Q. I asked you when you first saw it.

A. I don't remember when I first saw it.

Latter part of answer objected to as not responsive.

The WITNESS: Those matters only came into my hands incidentally.

Q. You don't know whether the mortgage was recorded or not when you first saw it?

A. No; I do not.

Q. I mean the mortgage given by Warren Leland, Jr., to John Fitch.

A. I know what you mean.

Q. Do you know how many notes the bank held with Warren Leland Jr.'s name on as maker and John Fitch as endorser thereon at the time you first saw that bond and mortgage?

A. I couldn't tell without knowing exactly when the mort-

43 gage was placed there from the discount ledger.

Q. Can you tell us the number of notes the bank held at any one time with Warren Leland, Jr., as maker and John Fitch as endorser?

A. I should say, including the $1,000 which Mr. Fitch handed in to us after this interview, I should say four would possibly be the extent at one time.

Q. All of which were to the credit of John Fitch's account?

A. Yes, sir; they were discounted for him at Mr. Fitch's request.

Q. This $1,000 note that you speak of, calling it an old note that Mr. Fitch brought to you, was that signed by Warren Leland, Jr., as maker?

A. Yes.

Q. What made it an old note?

A. It was past due.

Q. You don't remember the date of that, do you?

A. I do not.
Q. Do you know where that note is now?
A. It is in the bank, I suppose.

Note produced; identified by Mr. Wheelock.

The WITNESS: My impression was it was dated in January, but I didn't like to speak without knowing positively.
Q. When did you first see that note?
A. I should say it was in the spring of 1884; at any rate,
44 it was some time after the interview with Mr. Leland.

Note read in evidence. A note at three months after date of Warren Leland, Jr., maker, payable to the order of John Fitch and payable at the Central National Bank.

Q. Can you tell when you first saw that note?
A. I should say it was——
Q. By reference to it?
A. Oh, no; there is nothing there. All that I know is that after this interview with Mr. Leland and he did not come forward to pay this amount, which we understood he had agreed to—the pier stock and the mortgage which we then held—when the time elapsed and there was no attention paid to it and we pressed Mr. Fitch still further in the matter he finally brought us in this note.
Q. Can't you arrive at the time, then, when this note was first delivered to you?
A. Nothing nearer than 1884.
Q. Spring or summer, or what?
A. That I can't tell you. Mr. Hamilton may be able to tell you that. It is entirely out of my line to know anything except the facts.
Q. What amount of notes did the bank then hold against Warren Leland, Jr.?
A. At the time when I had that interview?
Q. When this note was delivered to you by Fitch—this $1,000 note.
A. I think I can tell by referring.
45 Q. The aggregate amount of notes?
A. Yes (referring); we had a note for $3,000; we had a note for $1,616.92 or 97 cents; I don't know which.
Q. With Warren Leland, Jr., as maker?
A. Yes, sir; that would be $4,616 and some cents.
Q. In the aggregate of the notes?
A. That was in the aggregate.
Q. Of notes against Warren Leland, Jr., as maker?
A. Yes; if we had any old notes which had been renewed; that I don't consider.
Q. I mean legal paper.
A. I mean lawful paper. The $3,000 note which we held matured January 30, 1882, and it was not renewed after that, from Jan. 30, 1882; the $1,616.97 that was due, with interest from June 8, 1881. Then there was this $1,000 note, which came afterwards.

Q. Then these two notes lying there past due in the bank was some time when you called on Mr. Fitch in regard to the Leland notes?

A. Certainly.

Q. Now, what was your object in calling on Mr. Fitch relative to the Leland notes?

A. For additional collateral, do you mean? Because Mr. Leland had not responded to what I considered his agreement in the interview we had. Mr. Fitch's condition was, in my judgment, not improving financially, and I called upon him, as I did repeatedly,
46 for either a settlement or additional collateral. He told me that all he could do for me was to give me another note of the same character that we already had.

Q. That is, against Warren Leland, Jr.?

A. Exactly, and he gave me this $1,000 note, which matured—was past due when he gave it to us. It matured, I think, in 1880, and the interest had accrued from that time on.

Q. April 14, 1880?

A. April 17, I think it was; three days grace added.

Q. That is the first you knew of the $1,000 note?

A. It was the very first I heard of it. I don't know but that may have been discounted at the bank. I know that he told me Mr. Leland owed it to him.

Q. About the figures "8968" endorsed on the back, whether you know what it means.

A. I do not know. It would look to me as though it had been in some bank and discounted in some bank, but it is not ours. We always put in red ink the figures on the top of the note discounted. That is probably some other bank, and that is because they have a number to refer to. If they want to take up a note they can refer to it much more readily by number than by name.

Q. But you don't know it?

A. No, sir; it is not ours, because ours is always in red ink.

Q. Look at the endorsement on the $1,000 note. Was the
47 name of John Fitch as endorser erased from that note when he handed it to you?

A. I don't know about that. I think it had been erased when he handed it to me.

Q. It was none of your act?

A. Not at all.

Q. In whose handwriting is the words "computed int. on this" (indicating)?

A. I don't know, sir; it is not anybody in the bank. I don't know the handwriting at all.

Q. Look again, will you? When did the name of John Fitch first get endorsed on that note below those words?

A. It is fair to suppose we would not take it made payable to his order without he endorsed it. It was first endorsed when he handed it to us.

Q. This note was never discounted by your bank?

A. I presume not.

Q. There is no discount mark on it?

A. It was never discounted at our bank.

Q. When you got the $1,000 note how many notes in aggregate did you then hold against Warren Leland, Jr.?

A. We certainly had three; we may have had some old notes which we counted as nothing, of which these were renewals.

Q. Is not that $1,000 note embodied in the $1,616 note that you have talked of?

A. No, sir.

Q. It is not?

48 A. No, sir.

Q. Why do you arrive at that knowledge conveyed in your last answer, or how?

A. Because it could not have been in that sixteen-hundred-dollar note unless we had previously discounted it and the sixteen-hundred-dollar note had been a renewal of this note with the additional amount. It has not the red ink discount mark upon it.

Q. That may be about your discount mark, but could not Mr. Fitch have taken the $1,616 note, at the same time having this thousand-dollar note, and making up the amount of the $1,616 by the $1,000 note and the $616 added to it?

A. No, sir; I don't consider that possible. There is nothing that would lead me to think that was possible.

Q. Was there any other paper handed to you for the bank by Mr. Fitch in company with this $1,000 note at that time?

A. No.

Q. How did the delivery by Fitch to you and the acceptance by your bank of the $1,000 note furnish you any better security for the claim against Leland or Fitch?

A. If Mr. Leland could not pay 100 cents on the dollar and could pay 75 cents on the dollar the more of Mr. Leland's papers we had the better security we had, I should suppose.

Q. How did this $1,000 note help you in any security towards the account you had against Fitch?

A. For the reason it gave us just so much additional security. If Mr. Leland owed John Fitch that $1,000 and he gave

49 that note to me as additional security it certainly helped our claim against Mr. Fitch.

Q. What was the claim you then held against Mr. Fitch—when you took from him this $1,000 note?

A. I should say about between eight and nine thousand dollars; not far from that.

Q. I mean by you the bank.

A. That John Fitch owed the bank? Possibly $9,000. It would not vary $500 from that either way.

Q. Then was that claim against John Fitch on the bank account against him for accommodation discounts on various notes?

A. There are no other notes except his note for $4,000, with 75 shares of pier stock as collateral, and the note of eight hundred odd dollars of the president of the pier company, whatever his name was—I don't remember—an $800 note.

Q. What composed this claim of about $9,000 against John Fitch?

A. I have told you exactly.

Q. You said $4,000.

A. In the first place, there was this sixteen hundred dollars and the three thousand dollars. Then there was the note of John Fitch for four thousand dollars.

Q. Who was the endorser on this note of John Fitch for four thousand dollars?

50 A. It never had any endorser, because we held the 75 shares of his pier stock as collateral security.

Q. Now I understand how you make up about the $9,000.

A. It is made up of the $4,000 note against John Fitch as maker, with the pier stock.

Q. And no endorser whatever on the $4,000 note?

A. None whatever; and also a note of $800—about $800.

Q. Who was the maker of that?

A. I don't remember.

Q. Who is the endorser on it?

A. Dr. Fitch, of course—John Fitch.

Q. That is, on the $800 note?

A. I discounted it for him and it went to his credit.

Q. Then the $3,000 note of Warren Leland, Jr., as maker, endorsed by John Fitch?

A. Exactly.

Q. And the $1,616 note you have been talking of?

A. Yes.

Q. Against Warren Leland, Jr., as maker, and John Fitch as endorser?

A. That is it exacely—a little over $9,000.

Q. How old was that note of John Fitch's—that $4,000 note?

A. You will have to ask Mr. Hamilton.

Q. You refer to him or the books?

A. I do. He will bring a transcript. He can tell you.

Q. Was the pier stock which you speak of given to the bank as security at the time when you first took the $4,000 note?

A. It was; that I can answer emphatically.

51 Q. In what way was the stock given to the bank originally?

A. The 75 shares?

Q. I don't know what shares?

A. The 75 shares as collateral security to this $4,000 note.

Q. In what way was it given to the bank—simply by delivery?

A. By delivery, of course.

Q. Then did the bank have any regular transfer of it to the bank as a bank?

A. The transfer was in blank on the back of the certificate, as it always is upon certificates when we take collateral security. Afterwards we had it transferred in the name of one of the clerks, where it stands now.

Q. What is the name of that clerk?

A. I think it is Edward Langdon—our confidential bond clerk.

Q. Do you know whether Warren Leland, Jr., had any knowledge of Fitch's delivery of that pier stock to you as security for that $4,000 note?

A. Security for the $4,000 note?

Q. Yes, sir.

A. No; I don't think——

Q. I say do you know?

A. Why, no; not at all. We never claimed it as security for the $4,000 note—that is, the stock that Mr. Leland originally owned.

Q. The 75 shares of pier stock was not the stock that is called Warren Leland Jr.'s stock?

52 A. Not at all. We have 125 shares in all.

Q. You hold 125 shares?

A. Certainly; 75 shares which has always been Mr. Fitch's, and 50 shares which — originally Mr. Leland's, making 125 which we now hold.

Q. When did you first get the fifty shares of what you call the Leland stock?

A. I told you I couldn't remember. The president of the bank never makes a record of anything of that kind.

Q. How did you first have the fifty shares of the Leland stock—by delivery only?

A. By delivery, certainly; as I told you, it was in the shape then of receipts, and I can't tell you whether those receipts were in the name of Warren Leland and endorsed by him; I think they were; I think they were endorsed by him and made transferable.

Q. Do you know whether Warren Leland, Jr., knew when the bank first had those fifty shares delivered—the fifty certificates?

A. I don't know anything about that.

Q. And those fifty shares were directly connected with the $3,000 note and the $1,616 note that have been spoken about?

A. Yes, sir.

Q. Can you tell us when those fifty shares were first formally transferred over to the bank?

A. No; unless the certificate itself will tell. I know we held them in the form of receipts for quite a time.

53 Q. Whether they were transferred to the bank in the bank's name.

A. I don't know. That was some time after we held them originally, in the shape of these original receipts.

Q. Are they regularly transferred now to the bank?

A. Yes; to Edward Langdon, who represents the bank.

Q. The same as if the bank had the transfer made to it in its corporate name?

A. Yes; we transferred them to the name of this clerk for the bank.

Q. You spoke of showing Leland the notes.

A. We did; we showed him the papers. I presume we showed him the whole thing. We stated exactly the condition of the ac-

count, and Mr. Hamilton made a memorandum at that time upon the back of an envelope, which he will bring to you.

Q. Can you tell when that took place?

A. I should say it was in the autumn of 1883.

Q. You say he stated to Warren Leland, Jr., what amount he must pay?

A. Yes, sir; decidedly.

Q. Do you remember the amount he stated?

A. Yes, sir; $4,000 and interest from the 16th of July, 1882. Mr. Hamilton has the memorandum now which he made that day.

Q. Mr. Hamilton was present, and you and who else?

A. I presume Mr. Fitch was. He came in with him, and I presume he was there. There may have been another gentle-
54 man there; I don't know anything about it; I don't remember. Mr. Leland made no objection whatever to that, and we all considered that he assented to it.

Q. You now refer to Warren Leland, Jr?

A. Yes; if anybody else represented Warren Leland, Jr.—whether it was Warren Leland, Jr.—I don't know anything about that; I don't know who it was. I took it for granted that it was Warren Leland, Jr.

Q. When you speak of the $4,000 did that represent the $3,000 note and the $1,616 note that you spoke of?

A. The only time I have spoken of a $4,000 note was the note of Mr. John Fitch individually, with the 75 shares of pier stock as collateral.

Q. Did you have any interview with Warren Leland, Jr., about these notes and the bond and mortgage and certificate of pier stock after that?

A. None.

Q. Do you know of Warren Leland, Jr., being at the bank after that time?

A. Not that I am aware of. He may have been a dozen times.

Q. Did you occasionally see Warren Leland, Jr., at the bank at the time he kept an account at the bank?

A. No, sir; not that I am aware of. I don't remember that he ever kept an account there.

Q. Do you have anything to do with the active business of the bank now?

A. Excepting that they look upon me as on deck whenever
55 any of the rest happened to be away. I had a note addressed to me day before yesterday as president, acting vice-president, and general manager. For the reason that I am a large stockholder and director, and have been from the beginning, they look to me to devote what little time I can to it.

Q. You have all along devoted more or less time to the active business of the bank?

A. I am just as much interested as though I was president.

Redirect examination:

Q. I understood you to say you had only had one interview with Mr. Warren Leland.

A. I don't remember of any other.

JOHN FITCH, being duly sworn, testified as follows:

Direct examination by Mr. LINN:

Q. Where do you reside, Mr. Fitch?

A. Sturtevant Hotel, city of New York.

Q. Were you formerly president of the Long Branch Pier Company?

A. I was the first and second year and director the third year.

Q. Will you please state briefly in your own way your connection with that company and the manner in which you obtained this bond and mortgage in suit in this action and the $5,000 of pier stock of Warren Leland, Jr., and the $3,000 note and the
56 $1,616 note and the $1,000 note? Please give the history of the whole transaction.

A. For a long number of years I was the lawyer and personal confident of Warren Leland and Charles Leland; also Simeon Leland. The relations between us were such that I, as a lawyer, do not see fit to disclose them. I knew everything, if I should tell it, which I do not intend shall be brought out. Warren Leland and Charles Leland had gone into bankruptcy. I bore the burden and managed everything. After they had purchased the property at Long Branch and put it in Warren Jr.'s name things run up——

Evidence objected to as illegal.

The WITNESS: Warren Leland, Sr., came to me and unfolded the plan about the pier. At that time I was dealing very heavily in Wall street. I was registrar in bankruptcy, and as counsel in other cases employed outside of the district, and I had some money. Mr. Warren Leland, Sr., was in my office very often. It was then on the corner of Broadway—345 Broadway. He unfolded to me the plan of the pier. I felt very kindly disposed. I saw that Long Branch was running down, and said I would take $2,500 stock. He wanted me to take more. He talked with me very much about it. It ended, however, in my taking $5,000 in the first instance. Things run along. They urged me to take the presidency and William Ottman the treasurer. I had never seen Mr. Ottman; in fact I had hardly seen any of those who had subscribed larger sums. I went and saw Mr.
57 Ottman and talked. It ended in a subscription to a certain amount, and it was so fixed that we came within the law. At the election of officers they made me president and Ottman, treasurer, and Warren Leland, *and* secretary. We went on; the contract was made with Job Johnson, and we went on and did the very best we possibly could—I mean the directors and stockholders; and it was necessary that there should be some head there, and Mr. Warren Leland, Sr., and myself, with young Warren's help, composed the

head, and we worked and worked and worked till the pier was built. At that time I was pretty tolerably well of. The Lelands—the father first, Warren Leland, Sr.—came to me and said that they were building the outside works there next to the pier, and spending a good deal of money, and asked if I wouldn't lend them money as fast as their indebtedness—as fast as the calls upon their subscriptions came along. I was kindly disposed, and said I would, and I did. I kept my account at the Central National Bank. The pier account was opened at the Central National Bank, and my impression is that Mr. Warren Leland, Jr., opened or said he was going to open an account of the Ocean Hotel there. I began and loaned as the assessments, as they called them, came in on the subscriptions. The notes in the bank will show. It kept on awhile—receipts, receipts. Then Mr. Warren Leland, Jr., placed a mortgage upon the Ocean Hotel and brought to me some bonds. I think they were $1,000 apiece. I have that
58 memorandum. I took so many as collateral security for these endorsements. They went into the bank there; I handed them over to the bank. As the certificates came along for the balance of the structure old Johnson apparently had no money and he couldn't buy his materials—the iron, somewhere in Pennsylvania—and they came to us. We told them we would see it paid, so and so, through the bank, and they were satisfied that Johnson would pay as we paid him, and as the engineers of the pier certified that so much was due Mr. Johnson he would come to me and Mr. Ottman would fix the matter up and I would advance the money some days before it was due Mr. Johnson. I think Mr. Warren Leland went to the bank sometimes in these matters. I have got the whole statement—this advancing money to Mr. Johnson, on his certificates of work done, before the amount was absolutely due—some days before—to make his payments. At that time of the transaction with Mr. Warren Leland, Jr., I held these bonds that I speak of, and as fast as the assessments upon stock subscriptions became due his became due. I loaned him the money. His subscription was paid in to the pier on his stock issued, signed, I think, by him as treasurer and Ottman as secretary. They were issued in the regular way. He brought them to me and gave them to me. I handed them right over to the bank, and Mr. Wheelock constantly upbraided me for doing that. So it went on until we come to the note here on which — the $35 or $36 or $49.80 discount. There was a
59 difference. It is where you made it due Central National Bank of New York one note, $3,000; out of that you had to take discount. The difference in this note between the note dated November 10, 1880, for $3,000, is that it is drawn with interest, and the other note is drawn for $3,000 and not for interest, so that one did not pay the other with the difference in interest when discounted; so that when one was due it was $3,046.50, as marked on the note, and the other one was—it didn't come up to that amount of difference.

Q. I hold in my hand a note bearing date November 10, 1880, for $3,000, payable three months after date, to your order, with interest. When that note matured how was it paid?

A. By renewal.
Q. By renewal for what amount?
A. $3,000.
Q. And who paid the difference between the $3,000 and the $3,000 and interest?
A. I did.
Q. What amount was that—$46.50?
A. Yes.
Q. I hold in my hand a note bearing date October 27, 1881, for $3,000, payable three months after date, to your order, at the Central National Bank. For what was that note given?
A. Renewal.
Q. A renewal of a former note of the same amount?
A. Of the $3,000.
60 Q. And this $3,000 note, or one which it represents, was originally given to you for money advanced to Mr. Leland?
A. Yes, sir.
Q. You had it discounted in the Central National Bank?
A. Yes, sir; in a series of renewals.
Q. And when was that note discounted—before it matured?
A. About the day or day before. They generally sent up or came up or something.
Q. I hold in my hand a note for $1,616.97, payable three months after date, dated March 5, 1881, made by Warren Leland, Jr. For what was that note given to you?
A. Mr. Warren Leland, Jr., had borrowed for Mr. Eiden $1,000, and was the endorser on it. Mr. Eiden literally hounded me. Mr. Ottman hounded me for pay. That $1,000 was put in that, and the $500 was assessments on the pier, and the other was the interest of what had run along in the series of notes.
Q. Were any payments made by Mr. Leland to you upon that note?
A. Yes, sir.
Q. This note is endorsed in September, 1880, in lead pencil, and the other part of the endorsement is in writing. There were $200 paid on this note?
A. Yes; they gave me a check for that amount.
Q. To be paid on this note?
A. Yes.
Q. And you endorsed it accordingly?
A. I did.
61 Q. Also it is endorsed July 14, 1881, I think, "Received $30 on the within note.
A. Yes, sir.
Q. Was that paid to you by Warren Leland, Jr.?
A. Yes, sir.
Q. And endorsed by you on that note?
A. Yes, sir.
Q. When did you transfer that note to the Central National Bank?
A. A day or so after. Let me say, Mr. Warren Leland, Sr., and myself talked about this matter, and he came up with me one morn-

ing and we went to the bank and looked over the notes with Mr. Wheelock and Mr. Bliss. I held that note then and Leland says, "That would be a good time to put that in with the others," and I did.

Q. I hold in my hand another note, bearing date Jan. 14, 1880, for $1,000, payable three months after date, to your order, at the Central National Bank. For what was that note given?

A. I think that was among the first of the loans. I didn't need the money and didn't put it in the bank.

Q. Did you ever have that note discounted?

A. Never, that I remember.

Q. Do you know *that* these figures mean, 8968?

A. I don't know what it is. I don't know who put those figures on unless it may be Edward. I don't remember.

Q. You have no recollection of ever having had that note
62 discounted?

A. No.

Q. That note was given to you for money loaned?

A. Yes, sir.

Q. Did you ever transfer this note to the bank?

A. Yes, sir.

Q. When?

A. They dunned me; they hounded me. I did everything I could to pay them. I think it is a computation they made; the figures 8968 is the bank's computation of what I owed.

Q. The bank, then, still holds these three notes—the $3,000 note and the $1,616.97 and the $1,000 notes?

A. And the odds on the $3,000 note.

Q. Being $46.50?

A. Yes.

Q. And the bank holds all of these notes with the other securities, which we will mention directly, as security for the claim which they held against you?

A. Yes, sir.

Four notes offered in evidence, marked exhibits.

Q. In addition to these notes, did you deliver to the bank any pier stock of Mr. Leland's?

A. Pier certificates. As fast as they were issued to Mr. Leland he handed them to me and I furnished the money.

Q. What did he hand them to you for?

A. As security.

63 Q. For the money advanced by you?

A. Yes.

Q. And you passed them over to the bank for the same purpose?

A. For the same purpose.

Q. And this bond and mortgage—did you deliver them to the bank also?

A. I did.

Q. For what purpose?

A. Also as collateral security right along.

Q. When was that done, if you can recollect?

A. I handed it to them a good while before I executed the assignment. Then I assigned it the day this bears date.

Q. Under what circumstances and for what purpose did you procure this bond and mortgage from Mr. Leland?

A. The Messrs. Leland owed a man from Philadelphia that I had a very horrid opinion of. They owed money on a mortgage. They got the mortgage, through the office of Coudert Bro's, of a French woman, they always told me, for $60,000. There was this mortgage that I have spoken of, on which I had those bonds which were issued. They didn't hand any more bonds to anybody else except what they handed to me, as Warren Leland, Jr., told me. Before they could get this money of the French woman they had to make a clean title of record, and that previous mortgage was on record in New Jersey, as they told me. Warren wanted me
64 to give these to him, and I told him how they were in the bank and how he must give this bond and mortgage, which he did, drawn by Mr. Lanning, in Mr. Lanning's handwriting.

Q. He gave you this bond and mortgage to put in place of the other bonds which he had previously delivered to you?

A. And also in security for what he owed me, and we computed it as it is there.

Q. Did you ever ask Warren Leland, Jr., to give to you any bonds or any securities to deposit in the Central National Bank simply for the purpose of giving you more strength with that bank?

A. No, sir. Good God! I was worth over $250,000.

Q. Did Warren Leland, Jr., or not understand perfectly well that this bond and mortgage and this pier stock was all held by the bank as collateral security for the payment of notes of his which you had transferred to that bank?

A. He knew that the pier scrip was handed to the bank as fast as it was issued, on the calling in of the subscriptions; and also he knew that those bonds I have described were there as security, and when he got the big loan and wanted to clean the record he knew that that mortgage to me was what he owed me, and I handed back those bonds, and that cleaned the record, and he got his money of the French woman; and my mortgage is second lien to the French mortgage. He knew that I had deposited that in the bank.

Q. Were you present at the interview between Mr. Warren
65 Leland, Jr., and Mr. Wheelock in the bank?

A. I went into the bank with him. I think we went from my office to the bank, and Mr. Wheelock and Warren, Jr., went out, and I sat down in a chair and had conversation with the folks around through the room.

Q. You did not hear what they said?

A. I didn't hear, or didn't go out with them.

Q. Did Warren Leland, Jr., refuse to renew this $3,000, or did the bank refuse to discount it?

A. They would not take any more of his paper. They refused it, and that hurt me immeasurably. It hurt me very greatly. It cut me right down.

Q. During the time that you were president of the Ocean Pier Company did you spend much of your time at the branch?

A. I should say that the first season I was there, all told, forty days, under these circumstances: We found that there must be some head there. Charles Leland, Warren Leland, and others—I think Warren, Jr., was in it—asked me to come down and to give as much time looking after things as I well could. I was registrar in bankruptcy and doing a very large business. They said, "Take room and board." I took the front room for the pier business office, and the rear room I slept in. I came and went. I had my meals; slept there. They were in the front room there very, very much. There we had the pier business done, down at the Branch, in that room. I came and went.

Q. During that time were you a guest at Warren Leland
66 Jr.'s house, expecting to pay for your board and room?

A. No, sir.

Objected to as irrelevant.

Q. What was the understanding in regard to that?

A. That I was to come down and help superintend. I am a good deal of a driver and worked along with Mr. Leland, and we worked only as two galley slaves could work.

Q. In whose interest were you working there?

A. Generally I charged no salary. Mr. Warren Leland, Sr., had no salary and we all worked——

Q. You were working for the pier company? In whose interest were you doing this thing?

A. In the interest of the Ocean Hotel, as I understood it.

Q. Did you pay any bills there at all then?

A. That summer? No.

Q. Were you asked to pay any bills?

A. None.

Q. Was any bill ever presented to you for your board?

A. None; never; not that year.

Q. Did you contract debts for wine and liquors during that time?

A. No, sir; I can tell you what I think they have done about that.

Q. Did you order wine and liquor there?

A. Not to any extent, because I drink but very little. I never drink wine.

Q. Did you become personally responsible to them for the
67 payment of anybody's else bills?

A. Not that I know of; I didn't intend to.

Q. Did you ever agree to become responsible for anybody's else bills?

A. No, sir.

Q. How was it, then, the second year after the pier was commenced?

A. The same thing. We built the additional 200 feet.

Q. And you spent your time there in the same way?

A. I spent some, but less time.

Q. Did Mr. Leland ever make any demand of you for the payment of your bills for 1879, 1880, 1881, and 1882?

A. No, sir.

Q. I have in my hand a copy taken from what is called the "hotel ledger" of Warren Leland, Jr., for 1879, 1880, 1881, and 1882, and 1883, in which you are charged for board, wine, whiskey, washing, and various accounts of other parties, amounting in 1879 to $635.17.

A. Take it one thing at a time.

Q. In 1880, $593.80; in 1881, $523.29; in 1882, $455.90; in 1883, $358.70. Are those bills correct? Did you contract any of the indebtedness charged against you on those memorandum registers at that time?

A. They did my washing; I slept in that back room, but as for running up any such bills as that—liquor, wine, or anything of that kind to be charged to me—I never, until you handed me that paper, I never dreamed of such a thing.

68 Q. I hold in my hand a bill dated July 31, 1884, for $40. Is that the first bill that was presented to you?

A. The first ever presented to me, sir.

Q. S nce 1879?

A. Yes, sir.

Q. Was that bill paid?

A. Yes, sir.

Q. Paid by cash or by check?

A. Paid and receipted; I forget how. That was the first I ever dreamed there was anything charged to me.

Q. When you were staying there where did you take your meals—at the hotel table or in the restaurant?

A. Both. Mr. Warren Leland always directed the boys at the door that I should go into the side room there when I wished to. I generally had my supper there and my breakfast and dinner in the main room.

Q. Did you ever find any cards in your room or in any place where you should have found them with any charges on against you?

A. Never.

Q. On the bill of 1879 I find in one column the following charges: Wine, $9, $7, $3.50, $1, $3, $1.50, $1.50, and $1.50; bar, 40 cents, 45 cents, 40 cents, 75 cents, 25 cents, 30 cents, $1.80, and 65 cents. Did you make any orders for whiskey or wine of that amount?

A. No, sir. I can tell you how I think that came. Great
69 efforts we were making to get $15,000, $20,000 subscriptions to the pier, and gentlemen were invited down from New York to look as far as we had gone to see if — couldn't get them to subscribe; and when they were there Mr. Warren Leland, Sr., and Mr. Warren Leland, Jr., and Mr. Clarles Leland would hand out the bottle, and every effort was made to get additional subscriptions. There was Waldo Hutchings came down there and staid over Sunday. There were one or two others, I think, came down and staid over Sunday; and then, another thing, reporters came and they were liberal with them.

Q. That all took place in your room?

A. No; it was around the house generally. Then they chucked it all onto me.

Q. Your room was the headquarters for the pier company; what pertained to that took place mainly in one of those rooms?

A. In that one front room—Mr. Bailey's room.

Adjourned till one o'clock p. m., March 5, 1886.

MARCH 5, 1886—Afternoon session.

Direct examination of JOHN FITCH.

By Mr. LINN:

Q. In undertaking this thing and becoming the president of the Long Branch Ocean Pier Company at whose request and suggestion did you act?

70 A. Mr. Warren Leland, Sr., Warren Leland, Jr.—Uncle Charles, as they called him—I think Ottman, and others. It was a great sacrifice for me to do it.

Cross-examination by Mr. ALLEN:

Q. How long have you known Warren Leland, Jr.?

A. I went to board at the Metropolitan about the 19th day of December, 1885, and "Little Warry," as we always called him, was then about—yes, he — born—well, he was a little fellow; I should take him to be about thirty-five or thirty-six.

Q. When was the first business transaction you had with Warren Leland, Jr., and what was it?

A. Growing out of the pier, the borrowing of this money.

Q. And when was that?

A. I can't give the date; the note is in the bank there; I cannot remember from my mind.

Q. Did you hold any certificate or voucher representing the pier stock belonging to Warren Leland, Jr., at that time?

A. I think not; when he gave that to me for the money that I paid him I put it in the bank.

Q. Had you boarded at Leland's Hotel either in New York or Long Branch before the pier was projected?

A. With the old folks, fifteen years, and then I had been at the Branch only very little in the summer time; I was at Saratoga.

Q. You spoke of being registrar in bankruptcy. When and where was that—in New York?

71 A. Certainly.

Q. When was that—1862—and how long were you such?

A. Let me see; well, now, I forget the date of the law. I am registrar yet, but the law is repealed.

Mr. LINN: The law was passed in 1867.

The WITNESS: I have held it ever since and hold it now.

Q. The first note was of what size that Warren Leland, Jr., gave you?

A. I can't remember; the discounts there will show.

Q. The second note, was that given when the first came due or before?

A. It came up a little before it was due. I may have advanced the money in a day or so and taken another.

Q. How much stock did Warren Leland subscribe in that pier, to your knowledge?

A. My memory—my idea was——

Q. You were quite active, weren't you?

A. No; not till afterwards. They got subscriptions to a certain amount.

Q. How much did Warren Leland, Jr., subscribe for?

A. I can't remember.

Q. How many shares did he subscribe for?

A. I can't remember; the paper will show.

Q. Did you take possession of the first vouchers that represented them, as far as Warren Leland, Jr., was concerned?

A. He gave it to me right away after he got it and I put it
72 in the bank.

Q. You put it right in the bank?

A. I did; kept putting them in.

Q. See if you can tell how many you put in in the aggregate.

A. I know that I put in $16,000.

Q. That was your own?

A. Yes.

Q. How many of these vouchers representing Warren Leland Jr.'s interest in the pier did you put in the bank?

A. That I don't remember.

Q. Did you take anything from the bank to show for it in the shape of a receipt?

A. No.

Q. Did you have a bank account at that time with the bank individually yourself?

A. Yes, sir.

Q. To what amount, as far as you can go by memory?

A. In my stock transactions; oh, I can't tell.

Q. You had a pretty good, large account?

A. Yes, at that time; the stock business, you know.

Q. I mean your individual account in the bank.

A. Yes, sir.

Q. Take the years 1878 and 1879. Can you not give us some idea of the size of your bank account?

A. No, sir.

Q. With this bank?

A. No, sir.

Q. Take the years 1878 and 1879, and let us know how many notes in the aggregate you had from Warren Leland, Jr.

A. I don't know, sir.
73

Q. What was the amount of money in the year 1878 that you advanced, as you say, for Warren Leland, Jr.?

A. I don't know. The money was advanced as the call came.

Q. Can you remember how much money you advanced in the year 1879 for Warren Leland, Jr.?

A. I can't remember anything outside of the papers.

Q. Take the year 1880. Can you remember how much you advanced for Warren Leland, Jr., then, in the aggregate?

A. Only by the paper.

Q. Exactly. Take the year 1881.

A. No.

Q. And the year 1882, how much you advanced for him?

A. I can't remember.

Counsel for defendant asks for production of notes.
(Produced.)

Q. In the year 1882?

A. I can't remember.

Q. In the year 1883 how much, if any, of money did you advance for Warren Leland, Jr.?

A. I make the same answer.

Q. And does the same answer apply to the year 1884?

A. I don't think the year 1884 did anything. They stopped with those notes.

Q. In the year 1884 you don't think there was any business transaction between you?

A. Those notes show.

74 Q. You don't think there was any business transaction between you in the year 1885?

A. I was in the house some days in 1885, and I was up at the hotel there in winter, but nothing about these claims, excepting whatever is the last endorsement on there.

Q. Mr. Fitch, didn't you keep any memorandum—private, I mean—of the dates and amounts of these notes that you had between yourself and Warren Leland, Jr.?

A. Nothing; there may have been some check book.

Q. You kept no regular book account yourself as to your transactions with Warren Leland, Jr.?

A. No, sir.

Q. When did you know that any of the notes that you say you got from him and which you put in the bank came due—simply by by the bank record?

A. Well, I sent a little paper to all the endorsers that so and so was coming due at such a date, and they were pretty prompt in coming around with the paper. Sometimes this gentleman, Warren Leland, Jr., came up.

Q. But you had a private account of your own, didn't you?

A. Oh, yes.

Q. During all these transactions?

A. Yes; of my individual account with the bank.

Q. Do you mean to say the proceeds of those notes went right to Warren Leland, Jr.?

A. He put them in the assessments on the pier stock, but there was the $1,000 matter that he got in with Henry Eiden.

75 Q. What do you mean by the $1,000 item?
A. A $1,000 note.
Q. Neither one of these notes?
A. $1,000 went into that $1,600 note.
Q. The $1,000 item you speak about is what went into the $1,600 note?
A. Yes.
Q. About what time was that $1,000 item?
A. That I don't remember.
Q. When was it first given, I mean?
A. That I have forgotten.
Q. Was the Eiden note renewed?
A. No, sir.
Q. Was it protested?
A. Mr. Eiden had the note and came to me for pay.
Q. I supposed it was payable in the bank?
A. I don't remember. I went over to Mr. Eiden's office and paid the note.
Q. You paid the note?
A. I did, sir.
Q. And that is the way it came to be the $1,600 note?
A. That is the way, I remember.
Q. Did you tell Warren Leland, Jr., that you had paid that note?
A. Yes, sir, and his father, too.
Q. What became of that Eiden note, then, if you paid it?
76 A. I think they have it.
Q. The $1,000 Eiden note is not the same as this $1,000 note of January 14, 1880?
A. I don't understand it so. If it is, then the $1,600 note was for some things that he had on record. If that was so it made up about $4,500.
Q. Is the $3,000 note of November 10, 1880, an original note or a renewal of a former note?
A. I think that those were renewals; I can't remember. The bank will show.
Q. Is this (indicating) an original note or a renewal of a former one?
A. That I don't remember. Mr. Leland has the notes. There was some talk between him and me about the interest—the $46.50.
Q. I want to know what is due on the $3,000 note. All that is due on that note is $46.50?
A. Yes, sir.
Q. How is the $3,000 principal disposed of?
A. Mr. Leland had the proceeds of it.
Q. How was it paid if $3,000 is not due?
A. I don't remember; by renewals.
Q. How was the $3,000 note paid so as to leave $46.50 due on it?
A. This, New York, Nov. 10, 1880; this, Oct. 27, 1881. There had been other renewals; the notes came along. I cannot remember,
77 but when the bank account comes it will show the continuation, and that was the last thing protested.

Q. Was the note of Nov. 10, 1880, protested?

A. No; they got another there to take its place.

Q. Look at the note of March 5, 1881. Is that an original note or a renewal of a former note?

A. He had been having little notes along, and this is the computation of what he owed me—that is, I made on the note of March 5, 1881, a computation of what Warren Leland, Jr., owed me, outside of the note of Jan. 14, 1880, and of the note of Oct. 27, 1881, and the item of $46.50 due Leland on the note of Oct. 27, 1881.

Q. Take the note of Nov. 10, 1880, whereon you say there is $46.50 due as interest or discount, whatever you have a mind to call it. Was not that note renewed by another note for the principal?

A. The bank will show that.

Q. Who paid the discount on that—on the renewal of that note?

A. The $47.50 that I paid?

Q. On the renewal note, I mean.

A. The discount was taken out.

Q. Did you pay it?

Mr. LINN: He paid the $46.50 on the new note.

A. I paid it. I did as well as I could for them.

Q. That will be about Feb. 12, 1881—the end of three months—when you would do that?

A. Yes; when it would roll around.

78 Q. Look on the back of that note—Nov. 10, 1880. Whose endorsements are on it?

A. Mine.

Q. In two places?

A. Yes.

Q. Is one erased?

A. Yes.

Q. Why?

A. Because the bank had it, and I struck my name off.

Q. How did you get it?

A. The bank had it and they showed it to me, and when I paid them I struck my name off of it, leaving it there.

Q. Did you leave it there in possession of the bank as your note, to be attended to?

A. I left it in the possession of the bank.

Q. Then you left that note in the bank as your paper against Leland?

A. The same as all the rest.

Q. When you left the paper in the bank whom did that note belong to?

A. The paper itself?

Q. Yes.

A. The $3,000 was paid. I had no claim; only that amount. I struck my name off.

Q. Then how did your endorsement get on?

A. I put it on again.

Q. Why?

79 A. Because to give the bank the title to it. I owed the bank.

Q. When was that done?

A. I don't remember.

Q. Near about?

A. I couldn't begin to tell you. It was done, I think, before I passed the mortgage over to them.

—. Before you had transferred the mortgage?

A. Yes, sir; because Mr. Warren Leland, Sr., came up to the bank and looked them over, and that I kept myself. I tell you everything just as near as I possibly can remember.

Q. If all but $46.50 has been paid on the note of Nov. 10, 1880, why is there not any receipt endorsed as payment on that note?

A. Of what? When you come to see the bank account and the number of notes that are discounted it has got a renewal or they pay their check. The Lelands kept that along and I did the best I could for them.

Q. Why didn't you make any memorandum on that note that there was $3,000 paid on it, leaving $46.50 due?

A. I have never had it out of the bank. That is not my mark; I struck my name off.

Q. Did you make any memorandum yourself that there was $46.50 due on that note?

A. No. Mr. Leland, the father, talked with me about that. I explained all to him.

80 Q. As I understand you, in your direct evidence you passed to the bank the note of Nov. 10, 1880, without any memorandum of credit endorsed on it?

A. That has never been out of the bank's possession; never been out of that bank in the world. I never had it in my possession. It has been there all the while. Both the Lelands have seen it.

Q. And you transferred also to the bank the note of Jan. 14, 1880?

A. Yes; this was the last that was put in.

Q. And also the note of March 5, 1880?

A. I did, in the presence of his father. I should not have handed it in until his father said, "Now, put it in."

Q. You also transferred to the bank the note of Oct. 27, 1881?

A. I think the bank held it against Leland.

Q. You knew that the bank held all of these papers?

A. Certainly.

Q. You also transferred to the bank the bond and mortgage?

A. I did, sir.

Q. And also what was called the Leland stock of fifty shares?

A. As fast as he gave it to me I handed it right over to the bank and never had them in my possession since. The bank has had them from that time.

Q. And you have said that you had a pass book at the bank of your individual account?

A. Yes.

81 Q. Is there no credit given to you in that bank book for any of these notes?

A. I don't know.

Q. Or amounts represented by these vouchers?

A. I, John Fitch, individually, never had a dollar of it myself. I don't know; they discounted them.

Q. I asked you whether your pass book didn't show that you had credit for those things?

A. I don't know.

Q. Did you take any receipt from the bank, Mr. Fitch, showing what they held any or all of these vouchers for?

A. No, sir; never.

Q. Did you give Warren Leland, Jr., any certificate or voucher or receipt showing what you held these vouchers—all of them or any of them—for at any time?

A. Not that I ever remember; no, sir.

Q. Why was the amount $4,500 selected as the amount to write on that bond and mortgage?

A. That was the amount due, as we understood it. Warren had the mortgage drawn at Long Branch and sent it to me.

Q. From whom?

A. From him to me.

Q. What did the $4,500 represent?

A. That (indicating it) represents the amount he owed me on that.

Mr. Linn suggests that the notes be specified as presented,
82 for the purpose of being properly identified.

Q. Oct. 27, 1881; that is one item?

A. Yes, sir.

Q. $46.50 in the note of Oct. 10, 1880?

A. Yes; that is another item.

Q. And the note of Jan. 14, 1880?

A. Yes; and that (indicating) or as much of it as was due at that time.

Q. March 5, 1881, is the note you refer to?

A. Yes. My remembrance is this: That up to the time the mortgage was given that was the amount due me, and if anything was had after that amount it was over and above the amount in the mortgage. As near as I can remember, the $4,500 at the time the mortgage was given run: The $46.50, dated November 10, 1880; the $1,000, Jan. 14, 1880; the $3,000 note, Oct. 27, 1881, and now he owed me—I discounted his note for $500—and then came the Eiden matter, and that was put in with the $500 note.

Q. They were combined together, you mean?

A. That is my memory.

Q. Was not that bond and mortgage written in New York?

A. No, sir; it is Mr. Lanning's handwriting. It was not made in New York.

Q. Was it written in Long Branch?

A. I suppose so, as he brought it to me.

Assignment asked for produced.

83 The WITNESS: That is in my clerk's handwriting, but not the mortgage.

Q. How long after you had the bond and mortgage delivered to you was it before you delivered it to the bank?

A. I put it in the bank the same day I got it. I delivered it to them and made the assignment on it the day that the assignment is dated.

Q. Do you mean to say that you simply put the bond and mortgage in the bank first and afterwards transferred it?

A. Afterwards filed the assignment on it. I went and handed it in the bank with the other papers.

Q. When you say you handed the bond and mortgage in to the bank with the other papers, what other papers do you refer to?

A. The papers that they had; the notes and receipts were there.

Q. The vouchers for pier stock?

A. Yes; when I handed that in to them I took out those bonds I originally spoke of and gave them to Mr. Leland—Mr. Warren Leland, Jr.; that enabled him to have the mortgage on the property cancelled in the record of Monmouth.

Q. I want to know what other papers you refer to?

A. They were there.

Q. These notes you have been giving in evidence?

A. No, sir.

Q. Oct. 27, 1881?

A. That was there.

84 Q. March 5, 1881?

A. I can't be positive as to that one. I am positive as to Nov. 10, 1880. I am positive as to the $1,000 note, Jan. 14, 1880. I am positive as to the note of $3,000, Oct. 27, 1881, and my impression is that I handed the mortgage to the bank—the bond and mortgage—before I did that.

Mr. LINN: Before you did what?

The WITNESS: Before I handed in the $1,000 note. I had had this in my pocket all the time.

Q. Looking at each one of the four notes you have referred to in your evidence, can you explain how you got your signature stricken off from all of them?

A. I struck them off myself.

Q. Of all those four notes?

A. Yes, sir.

Q. At the same time or at different times?

A. At different times.

Q. How could you get those notes to strike your signature off of all of them if those notes were not paid?

A. I struck them off in the bank.

Mr. LINN: My recollection is, when I first went to——

Objected to.

Q. Then, there was only one protested, wasn't there?

A. Only one protested that the bank kept; my impression is that there were some protested notes taken up.

85 Q. If any of the four notes were protested other than the note of Oct. 27, 1881, why is not a certificate of the protest attached to the note?

A. Because the note of Nov. 10, 1880, was not protested. The note of Jan. 14, 1880, has never been protested. The note of March 5, 1881, has never been protested, but was handed in in the presence of his father. The note of Jan. 14, 1880, $1,000, was handed in afterwards.

Q. Can't you give some information as to the time when the notes were handed in afterwards, as you speak of?

A. You mean handed in to the bank, don't you, as additional security? The $1,600 note, dated Oct. 5, 1881, was handed in after July 14, 1884.

Q. Well, another; can't you tell us something about that?

A. The note of Jan. 14, 1880, was handed in since that time. I didn't think it was necessary to leave my name on these papers to sue them in the State of New Jersey.

Q. Why did you not, when you say you left with the bank the bond and mortgage as security at that time, execute a written assignment to the bank of the bond and mortgage?

A. At that time my name on a note made it about as good for that amount as was necessary.

Q. What do you mean, to the amount of $4,500?

A. Yes, sir; perfectly.

Q. From the date of the bond and mortgage until the date of the assignment did the bank have possession of the bond and mortgage continuously?

86 A. They did; never in my possession from the day I had them. I never saw them until now.

Q. Which officer of the bank did you hand that bond and mortgage to first?

A. I don't remember.

Q. Which officer of the bank were you most intimate with in business transactions—Wheelock?

A. Wheelock or the present president or cashier; either the president or the vice-president, one or the other.

Q. What good was it for the bank to have possession of this bond and mortgage, without any written assignment, for about two years?

A. President Wheelock, the former president, and Vice-President Bliss, now president, had my paper discounted without going before the full board, as I was then perfectly good. They upbraided me for endorsing the Lelands and helping them in this way. When they saw the bonds I said those were on that house, and they knew I had the security. Then when he got that loan and wanted the bonds they then saw I had that security, and they did not think I would do any fraud on the bank.

Q. Those bonds which you refer to are what might be termed the bonds on the omnibus mortgage which you had delivered to you, heretofore spoken of?

A. So I understood it. It was necessary for Mr. Warren Leland, Jr., to have those bonds in order to have the mortgage can-
87 celled on the record of Monmouth county, N. J., so he could get that loan and get free from that Philadelphia man—that French woman.

Q. The Coudert loan took the place of the omnibus mortgage. Then those bonds that you speak of, were they ever transferred to the bank?

A. Handed them right over.

Q. Did the bank demand those to be transferred over to them?

A. Never.

Mr. LINN: They were delivered to the bank and held as collateral.

Q. I didn't ask that. Did the bank hold them as collateral?

A. Yes.

Q. Delivered to them by you?

A. Yes.

Q. Then, when you took up the bonds you speak of from the bank why did you not regularly transfer and assign this bond and mortgage to the bank at that time?

A. Because I was too well off. It was safe in my hands. I was perfectly responsible and good.

Q. You say you were perfectly responsible without assigning the bond and mortgage to the bank at that time?

A. I was.

Q. Then, at that time the bank did not hold that bond and mortgage as security for any of these figures?

A. Certainly they did.

Q. Did they own it at that time?

A. The title was in me—the legal title.

88 Q. When you took from the bank those bonds who owned this bond and mortgage?

A. The legal title?

Q. I am asking you the question.

A. The bond and mortgage was given to me. I handed the bonds back; I put it in as collateral just the same way as I did the certificates of stock to him. My name is not on those certificates of stock.

Q. Whose name was on the back of them?

A. I don't think I ever put my name on them—not that I remember.

Q. Who requested you to execute this assignment of the bond and mortgage to the bank?

A. I did that of my own accord the moment I began to get my heavy losses in Wall street.

Q. Who asked you to execute the written assignment of that bond and mortgage to the bank?

A. I did it of my own accord.

Mr. LINN: You mean to say nobody asked you.

The WITNESS: Nobody asked me.

Q. What suggestion prompted you to do so of your own accord?
A. Losses in Wall street in stocks.
Q. When did you actually make the written assignment?
A. The day it is dated.
Q. How long before the date of it were you prompted, as you say, to do it?
A. I don't know; pretty quick.
89 Q. How long before?
A. I don't remember.
Q. How long before the date of the assignment did your losses in Wall street occur to you?
A. I don't know that, either.
Q. Did you say anything to any of the officers of the bank when you executed that assignment or when you were prompted to do it?
A. I drew the assignment in my office, and I went over there and gave it to him.
Q. To whom?
A. I handed it to Mr. Wheelock or the then president, Mr. Bliss. He took it and put it with the others—I mean those other two vouchers.
Q. Where was the bond and mortgage when you say the assignment was written in your office?
A. Over in the bank.
Q. How did you get the date of the bond and mortgage?
A. I went over there and looked at it in the bank, or else sent Edward over—one of the two.
Q. Why were you in such a hurry at that time to make the assignment?
A. I was failing in business, and secured everything I could. I had collaterals up all around in various places. The blood was taken out of me—ten and fifteen thousand dollars a day.
Q. When you delivered this assignment to the bank officer
90 did you take any receipt or voucher to show for it in any way?
A. No; I trusted Mr. Wheelock with my life.
Q. Where is the bank book of your individual account, Mr. Fitch?
A. Well, I don't know; somewhere around.
Q. When did you last see the bank book?
A. I have not deposited anything in the bank in two or three —. My general account was in the general bank book. It wouldn't show anything of the great amounts. I don't know when I saw it last.
Q. Haven't you got it now?
A. It may be somewhere around. It has been balanced up and closed.
Q. You were having some accounts with this bank during the years that you have given in evidence and there has been one or more bank books, as I understand you, containing your bank account?
A. Yes.

Q. Which you had at one time in your possession?

A. Yes.

Q. Can you not produce some of those bank books?

A. I will look for them. I may run right across them. You are perfectly welcome to them.

Defendant demands witness to produce bank book of his individual account, commonly called the pass book, of the years 1880 and 1881; also of the year 1879.

91 The WITNESS: That note of March, 1881, I put in the bank after the last endorsement.

Q. Then, whether you were given credit for your account in any way—your individual account.

A. They put nothing on my account. It had laid right there in that way. It is possible you may find in the bank that in this matter of discounts I sometimes sent up and gave the bank my check and gave Leland the money. It may be possible you will find one or two of my checks that way.

Q. Will you look at this note of November 10, 1880? Look at the figures 4980 in red ink. What does that indicate?

A. I don't know anything about it whatever, sir.

Q. Who had credit in their account for that note?

A. I don't know. The Lelands had the money some way.

Q. Who had credit in their bank account?

A. I don't know. I know I discounted it and endorsed it.

Q. Look at the $3,000 note of Oct. 27, 1881. Who got credit in their bank account for the proceeds of that note?

A. I don't know. Mr. Leland had the money and the note was protested.

Q. Did you not have credit for each of those last two named notes in your individual bank account?

A. I think not; I don't remember whether I did or not.

Q. How did they get the money?

A. Warren Leland was up in my office last week——

Q. I ask how they got the money. I want to know how
92 they got the money.

A. Either direct from the bank or my check; one way or the other.

Q. That is what I want to know—whether you handed them by bank bills or by check.

A. No bank bills.

Q. So the Lelands got the money either by check or bank bills?

A. They got it some way.

Q. Endorsed on the note of March 5, 1881, are two receipts; all in your handwriting?

A. Yes, sir.

Q. Who paid you that money?

A. That was a $200 check given me at Long Branch. I don't know whether he signed it or his father.

Q. You received that money by check and forwarded it to New York?

A. Yes; to go to my credit.
Q. In this same account?
A. The Central National Bank.
Q. I notice that there is no date to the receipt.
A. I forget.
Q. Where was the note, then, when you got that $200?
A. In my pocket, I think.
Q. And can you say when it was you endorsed that receipt on it?
A. The very day that I got the money.
Q. I notice there is no date on the receipt.
A. It is in blue ink. I never in my life had any blue ink in my office.

93 Q. When you got that $200 did you show Leland the note?
A. I forget whether I did or not.
Q. Did you ask him for $200?
A. I asked for $200 to make my bank account good.
Q. How long after it was it you put it on the note?
A. I think the same day, in the room.
Q. You don't know whether you did it in their presence or not?
A. I don't know.
Q. How comes it you didn't date it?
A. I can't tell exactly.
Q. I see a lead-pencil mark on there over the receipt. Is that in your handwriting?
A. I should hardly—I can't say. It is so much better than my handwriting.
Q. Is there any suggestion whereby you can come to the year?
A. I know I had just come down from Saratoga. I had drawn closer than I thought I had.
Q. Now, the second receipt, for $30—it has got a date to it. Where did you receive that money?
A. I think that it was down at the house.
Q. When you got the $30 did you have the note with you?
A. I think I did, and put it right on there.
Q. How came you to sign the receipt twice?
A. When I put that in the bank I put on the "John Fitch" there, which made it good; then I struck my name off in the bank.

94 Q. There are two signatures.
A. That one signature—I had stricken off one, and then I put on mine again to make the title.
Q. But down below is another signature.
A. The first one is to the $14; the second one is when I put it in the bank, and then I destroyed it and left my other signature.
Q. But here is a fourth signature.
A. Because he asked me to; a double signature to all these signatures.
Q. Do you claim there is yet due the two notes, one of $3,000, one for $1,616.62 (of course less the endorsements), and also the $1,000 note and also the $46.50 item?

A. Yes; the $4,500 goes on the pier assessment; the $1,000 additional was the Eiden that I took up. The Eiden matter was not in the charge. That is my remembrance.

Q. Do you know whether or not the note of $1,000 of Jan. 14, 1880, is not the Eiden note that you talk about?

A. I don't so understand it; certainly not. It was $4,500 besides the Eiden note; that is the way I understand it.

Q. Now, are you clear, Mr. Fitch, that the $1,000 of Jan. 14, 1880, was not renewed by another note of about April 14, 1881?

A. Oh, no; that note has never been renewed or paid, or nothing. If it was I was asleep.

95 Q. Your recollection of these circumstances as to the renewals of these notes or any of them is governed altogether by your memory and not by memoranda?

A. Memory entirely and what you see here and what there is in the bank.

Q. Have you not any books of account of your transactions with the Lelands, either as to the moneys in question or advances made to them?

A. Not in particular.

Q. You were often at the hotel, were you not, at Long Branch?

A. Oh, yes; I was there thirty or forty days.

Q. Didn't you ever refer to their books in the hotel or ask in reference to them to know about any account there might be against you?

A. I never dreamed of any account against me.

Q. There were renewals at different times, as I understand, between you and Warren Leland, Jr.?

A. The bank has them all. Whatever the bank has got is all right.

Q. Now, Mr. Fitch, look at this note of July 20, 1880, for $1,000 and see if that has your endorsement on the back of it.

A. Yes; and this is Henry Eiden's note, I think, which I took up and paid Mr. Eiden the money; understand Eiden held that quite awhile.

Q. Do you know who is the other endorser on it?

A. Henry Eiden, as I understand it.

Q. Do you know the handwriting?

A. Well, yes.

96 Q. Is it Eiden's handwriting?

A. Yes.

Q. Now, Mr. Fitch, there is another note here. Look at the note of Dec. 30, 1880, for $1,593.07; whose endorsement on the back of that?

A. Mine.

Q. Your signature—handwriting?

A. Yes.

Q. Explain, if you remember, what that note was ever connected with.

A. Positively don't know.

Q. Who was the maker of the note?

A. Warren Leland, Jr. It is my endorsement. It is my genuine signature. That note I have forgotten all about. I have no particular remembrance of it now.

Q. Look at the figures representing the calculations of interest on the corner; do you know whose handwriting the figures are in resulting as the apparent interest of $23.89?

A. I can't say. I don't know whose handwriting it is. I do not think it is Warren Jr.'s or his father's.

Q. The principal of that note, $1,593.07, and the interest of $23.89 added together make $1,616 and some cents?

A. Yes.

Q. Explain, if you remember, what connection it has with the $1,616 note which you have already heretofore testified
97 about.

A. I have forgotten about that. They wouldn't discount at the bank and I helped Warren and he gave the notes along for what they——

Q. Can you explain what connection the note of Dec. 3, 1880, has with the note of March 5, 1881?

A. It looks very much, in my mind, like a renewal with interest added.

Q. Whether you remember that or not.

A. I have forgotten. I have no recollection that I have ever been paid so far.

Q. The note of April 17, 1880, at three months, would come due——

A. When the time rolled around, July 20.

Q. July 20?

A. Somewhere there.

Q. Do you remember the occasion of March 5, 1881, or thereabouts, of a calculation being made of the interest, in your office, due on the note of Dec. 3, 1880?

A. No; I don't remember anything about it. It is entirely out of my mind.

Q. Do you remember where the note of March 5, 1881, was given—whether in your office, in New York, or in New Jersey?

A. I think that was in my office—my judgment is—in New York.

Q. Whose handwriting is the body of the note, March 5, 1881, in?

98 A. In Warren Leland's.

Q. In whose handwriting is the note of Dec. 3, 1880?

A. In his or his father's; he writes almost as he does.

Q. Did you not receive any letters from Warren Leland, Jr., concerning these notes?

A. The only letter I had—once I tried to get this bond and mortgage cashed, at the same time asking them would they cash it and pass it on the series of the others and let Mr. Leland pay it. I tried various people. I got an offer of $4,000 from Coudert, and I asked Mr. Butler, who rented the Mansion House, to tell somebody else that the Leland mortgage was perfectly good; the property was worth so much; and Warren wrote me a letter, saying he didn't want me

to do that; I was hurting his credit in thus having spoken to Butler.

Q. Did any letters pass between you?

A. I got the letter when I was trying to get a purchaser for this mortgage.

Q. Any other letter?

A. I don't remember.

Q. Did you write him any letters?

A. I may have written him letters.

Q. Don't you know?

A. I have forgotten.

Q. Whether there was any correspondence carried on between you and you got letters from him and he got letters from you.

99 A. I think there have been letters passed between us.

Q. Where are the letters?

A. I never kept them; they went in the waste basket.

Q. Look at the note of Dec. 10, 1879, of $563.28; who is the maker of the note?

A. Warren Leland.

Q. And whose signature is endorsed on it?

A. Mine. The body of the handwriting is Edward Ball's, my clerk.

Q. What is connected with it?

A. That, I think, was on $500; money I let him have to pay on one of the last assessments—Warren Leland, Jr.

Q. What connection does it have with the note of Dec. 3, 1880?

A. I don't know.

Q. What connection, if you remember, does it have with the $1,616 note, so called in the evidence?

A. I don't know.

Q. You said that Ball was your clerk?

A. At that time, yes.

Q. Was he with you at Long Branch?

A. No, sir; not with me.

Q. Was he down there?

A. He went down there.

Q. Was he not your clerk at Long Branch, in reference to any of your business?

A. No; Mr. Ball copied schedules in bankruptcy for the Messrs. Leland.

100 Q. I want to know if he was not down there as your clerk?

A. No, sir; I don't know how long he staid there.

Q. Did you not come to the hotel office with Mr. Ball and order a room for Mr. Ball?

A. No, I did not; neither do I know where he slept or staid.

Q. Did you not know that Mr. Ball had a little account there?

A. No, sir.

Q. When did Ball first go there?

A. I don't know.

Q. How long did he stay there?

A. I don't know.
Q. At Long Branch—I mean.
A. I don't know.
Q. Do you know of an account in 1884 at the Leland Hotel?
A. With whom?
Q. You.
A. 1884?
Q. Yes.
A. Where is that blue paper?

Paper referred to produced by Mr. Linn.

Q. Do you know of any account in 1884?
A. I know of that.
Q. And that you paid?
A. I did, sir.

Q. Then Ball was there prior to that, was he not?
101 A. Yes; I should say so.

Q. Do you know how long you were at the Leland Hotel the first season at Long Branch?
A. No.
Q. Or how many days in the second season?
A. No.
Q. Or the third season?
A. No; I was there mostly in the latter part of June and the early part of July, and then again in August.
Q. If you lodged and ate at the hotel, how was it paid?
A. The agreement was that I was to come and give my time in working on the pier and getting subscribers, and was to sleep in the back room and use the front one as a sort of pier office, and I was not — pay anything for my board. I was to have the room. It was a very great sacrifice for me to come. I was taking quite a number of proofs in bankruptcy every day, at $1.50 each, and my loss every day was a good deal over $10, and had I supposed there was the least idea of charging me anything I would not have come. I was perfectly amazed when I saw your bill of particulars.
Q. Whom did you make that agreement with?
A. Charles Leland, who is now dead, begun it first. Warren Leland, Sr., Warren Leland, Jr., knew and the pier folks, as I understand, knew; the directors there knew it. We worked like royal beavers. I never understood I was to be charged anything; had I done so I would never have gone there and given my time.
Q. This time—you mean in July, 1884?

A. Yes; at that time all my connection with the pier was
102 finished. I no longer gave any attention to it.

Q. Wasn't that pier finished in the year 1879?
A. We worked on it all the while.
Q. Was it not finished in 1879?
A. They tore the end away and had to repeat it.
Q. You were there after you ceased to be president of the company, staying at the hotel, were you not?

A. Yes, sir; I was director, though I ceased being president at the end of the first two years.

Q. Do you know Robert Dodge?

A. Sitting here as I do, I do not remember him; you might call him to mind.

Q. Whether you didn't bring him there to the hotel?

A. Robert Dodge—I must say that I have no——

Q. Was he not a companion of yours at the hotel or an acquaintance?

A. No, sir; I have no recollection of Robert Dodge. Certainly I never had anything to do with Robert Dodge.

Q. Do you remember of Robert Dodge's staying at Warren Leland's hotel while you were there, at any time?

A. No; I don't call any Robert Dodge to mind.

Q. Do you know H. Vaughn?

A. I have no remembrance of any Vaughn as I sit here. Can you tell me what his business was?

Q. I don't know. Do you know A. Hearn?

A. I can't call that man to mind.

Q. Was Mr. Ball at the hotel with you in the year 1880,
103 with his little daughter?

A. I don't know; not with me individually.

Q. Did you see him there with his little daughter?

A. I don't remember. If he was there I should probably have seen him every few days.

Q. In March, 1881, Mr. Fitch, how many notes do you claim as due then, one or two?

A. Just what the dates show.

Q. How many do you claim at that time as due?

A. Just as they appear here.

Q. Here are three or four notes; do you claim three or two?

A. Just as the dates show.

Q. Do you claim in March, 1881, that there was a $1,000 note due you in addition to a $3,000 note and a $1,600 note?

A. I claim that that note has been due ever since its date. The note dated Jan. 14, 1880, for $1,000 was not paid or renewed, that I ever knew anything about it.

Q. You said that there was a $1,000 note due in 1881. Of course, it must have been besides the $3,000 note and the $1,600 note?

A. The $1,000 note was due over and above and independent of the $1,600 note, the $3,000 note, and the fraction on the other.

Letter offered in evidence dated New York, March 8, 1881.

Q. Whose handwriting is that?

A. Mine.

104 Letter referred to read as follows:

NEW YORK, *March* 8, 1881.

Warren Leland, Jr.:

Enclosed is the $1,593.67 note. The other one, $3,000, is in the

Central National Bank. Wish when you come to town you would go and get it. The cashier, Mr. Hamilton, will tell you all about how it is.

Yours, &c., JOHN FITCH.

Adjourned until Friday, March 12, 1886.

MARCH 12, 1886.

Parties met pursuant to adjournment.

Present: Mr. Linn, solicitor for complainant; Mr. Allen, solicitor for defendant.

Cross-examination of JOHN FITCH resumed.

By Mr. ALLEN:

Q. Mr. Fitch, do you remember the last question asked you at the previous examination?

A. I do not.

Q. It was in reference to a letter. (Letter produced.) It was simply to call your attention to the——

A. Yes, sir; I can tell you what it is. Hamilton can tell you what it is. We had a letter from Mr. Warren Leland, Sr., about it; and I couldn't understand what was the difference in the interest. That is my memory of it.

Counsel for complainant requested to produce notes.

Produced.

105 Q. What prompted the writing of that letter?

A. My memory of it is this: The $3,000 note—there was a difference between the interest and whatever the renewals were, I think; and Mr. Warren Leland, Sr., did most all the writing, but the father's and son's writing is so near alike it is difficult to tell them apart. The subject-matter of this is to come and get this and that Hamilton would tell me about that—how they are marked on there. That is as I understand it. How long it laid there—the old gentleman claimed that the one note took up the other.

Q. You say one note took up the other. Which identical note took up the other?

A. The protested one—Oct. 27, 1881. If it was not this it was some of the renewals of some other things. The Lelands took all their notes except those they hadn't paid and that fractional difference.

Q. I ask you what you mean by the protested note? I mean by the protested note, Oct. 27, 1881.

A. The notes—there were quite a number discounted the bank account will show. I cannot remember personally, but my impression is that what he meant was that Hamilton would explain about that difference. I know Warren Leland, Sr., wrote a letter about that matter.

Q. About the $46.50, you mean?

A. Yes; something about that—that one $3,000 note took up the other.

Q. Did he write a letter to you?

106 A. Yes, sir; one or the other of the Lelands. At that time I was doing an immense business.

Q. Now, Judge Fitch, the $3,000 note of date of Oct. 27, 1881, which you have been talking about—that is the one apparently duly protested?

A. Yes; that was the one.

Q. And you had notice of protest?

A. I did.

Q. From the bank, I suppose?

A. Yes.

Q. Was the $3,000 note of Nov. 10, 1880, protested?

A. I think not, sir.

Q. Was the $1,616.97 note of March 5, 1881, protested?

A. No, sir; never been discounted in the bank.

Q. And was the note of $1,000, of Jan. 14, 1880, protested?

A. No, sir; not that I ever heard of. I never had it in the bank.

Q. The $1,000 note was never in the bank?

A. Never discounted until I handed it to them for collateral security for what I owed.

Q. Whether the $3,000 note of Nov. 10, 1880, and the $1,616.97 note of March 5 and this protested note were discounted?

A. Why, no; that has never been discounted.

Q. The note of March 5, 1881—you identified that?

A. That has never been discounted. They either renewed or did something or other with——

Q. I mean the note of $3,000 of November 10, 1880.

A. The note of $3,000 of November 10, 1880, was discounted

107 and paid, either by renewal or money or somehow; all but the $46.50; that is all the lien the bank has on it. I have no lien on it other than that way. As it was not protested, they couldn't hold me for that amount; but I paid the $46.50.

Q. When the $3,000 note that was protested came due, did you owe the bank anything at that time? Here is the date of it—the protested —.

A. I don't know. Oh, yes; that must have—I had things backwards and forwards all the while, in the bank.

Q. The date of protest is January 30, 1882. Did you owe the bank?

A. I don't know. I borrowed money to deal in stocks. As I said, I can't remember. They refused to discount any more for the Lelands, and shortly shut down on me.

Q. On February 10, 1880, or February 13, 1880, when that note became due, did you owe the bank anything?

A. I was borrowing heavily from the bank on collateral security of my own, outside and independent of these matters entirely, and dealing in stocks. How, when, or where, I have no remembrance.

Q. On June 5, 1881, or June 8, 1881, when that note became due, did you owe the bank anything?

A. I unquestionably had stock notes in the bank, with security at-

tached to them. I never borrowed anything from the bank but what I gave security.

Q. On April 14 or April 17, 1880, did you owe the bank
108 anything then?

A. At that time I had unquestionably borrowed money of the bank and given them collateral security.

Q. Did you get any answer to your letter of March 8, 1881?

A. I don't remember.

Q. Who paid the discount on the notes you say were discounted?

A. Who paid the difference?

Q. The discount—you or Mr. Leland?

A. That I can't tell. I know I paid some. How much, I can't tell.

Q. And to whose credit in the bank did the proceeds of the discount note go; to yours individually?

A. The bank will show. I don't know. They attended to it themselves a good while. They used to send up their nephew. He used to bring up the notes.

Q. Do you know the signature to the check of Feb. 13, 1881; that is the right date, isn't it?

A. Yes, sir; that is either written by the father or the son Leland, and that is my signature.

Q. The endorsement?

A. Yes.

Q. For $45?

A. Yes.

Q. Can you tell what that check applies to?

A. No, sir; I cannot.

Q. Check of Oct. 27, 1881—what is the amount?

109 A. $48.50; same signature—Warren Leland, Jr., written by himself or his father.

Q. Endorsed by you?

A. Yes, sir.

Q. Explain what that check applies to—$48.50.

A. To some of the renewals, I presume.

Q. Whether it is on account of principal or discount.

A. I don't know.

Q. Look at check of May 14, 1881. Whose signature as maker and whose signature as endorser?

A. The maker is either written by Warren Leland, Sr. or Jr., and endorsed by me.

Q. Is that your genuine signature?

A. Yes, sir.

Q. Can you explain what that is for?

A. Nothing more than I carried it to the bank and gave it to them in discount or renewal of their notes.

Q. Does this check apply to either one of the 4 notes in question?

A. It certainly does not apply to the one dated March 5, 1881. It does not apply to the one dated January 14, 1880. I don't see how it can apply to the protested note, and it may by some hook or crook possibly apply to the one of Nov. 10, 1880, but I don't believe it does.

Q. Look at note of Jan. 14, 1880, and the figures 8968 endorsed on it in black ink.

A. Yes.

110 Q. Can you explain what they betoken?

A. No; but I can guess. When the computation was all made up of what I owed the bank it was that amount; that is my guess; I have no knowledge of it; that was put in since I handed that to the bank.

Q. You think those figures represent $8,968, do you?

A. That is my judgment; yes.

Q. And do you know whose handwriting it is in?

A. I do not, sir.

Q. Look at the note of Nov. 10, 1880, and the red figures "4980" endorsed on that note. Do you know what that betokens?

A. No; nothing. That has been in the bank steadily——

Q. Do you know who endorsed the figures referred to on either of those notes?

A. No, sir; I do not.

Q. In your judgment, are not those figures in red ink and black ink endorsed on those notes in the handwriting of the same man?

A. No, sir; it is not by a jugful.

Q. Or of that one?

A. Or of that one—no, sir; I shouldn't say they were.

Q. Do not those figures endorsed on those notes denote that those notes have been in the bank—one for discount and the other for collection?

A. The note of November, 1880, had figures on which I have talked with Mr. Hamilton about—the other one I have no

111 knowledge of; I didn't know they were on it.

Q. I ask you your opinion, whether those figures do not denote that both notes have been in the bank—one for collection and the other for discount?

A. No; I do not think so. That one never has been in the bank; I have had it in my possession all the time.

Q. Look at the note of March 13, 1880, for $500. What is it? I can't see the figures.

A. $571.72.

Q. Whose signature is there as maker?

A. Either old Warren Leland for his son, or young Warren Leland for himself as maker.

Q. Don't you know young Warren Leland's handwriting?

A. No; it is either his or his father's; it is the same thing.

Q. It reads "Warren Leland."

A. They write so near alike I can't tell them apart.

Q. Isn't it Warren Leland, Jr.'s, signature?

A. Either his or his father's.

Q. Don't you know?

A. I have seen them both, and they write so near alike I can't tell.

Q. You have seen that note before?

A. Yes.

Q. Whom did you get it from?
A. The Lelands.
Q. Which one?
112 A. I don't know.
Q. Whose endorsement?
A. My own.
Q. When was that endorsement scratched off?
A. I don't know.
Q. By you?
A. I don't know.
Q. Has that note been in the bank?
A. I judge it has, from this writing on the top there.
Q. What writing?
A. The red ink.
Q. The figures?
A. The red ink—"3, 5, 30, June 16"—all unquestionably in the handwriting of some one in the bank—the red ink in figures.
Q. What was that note connected with?
A. I don't know.
Q. Do you know whether that is a part of the $1,616 note that is in the suit?
A. I don't know.
Q. Do you know whether this note of March 13, 1880, was renewed by another note?
A. I do not.
Q. Do you know what the figures in black ink of "9, 1880," endorsed on the note of March 13, 1880, represent?
A. I do not; they seem to be in the same handwriting as the other one.
113 Q. You mean the other one in black ink?
A. Yes.
Q. They seem to be in the same handwriting as the figures "8968" on the notes endorsed on Jan. 14, 1880?
A. Yes; I have no knowledge of what they mean.
Q. Are not the figures in black ink and the figures in red ink endorsed on the note of March 13, 1880, in your opinion, in the same handwriting?
A. No, sir; unquestionably different officers in the bank.
Q. Then your judgment is that the figures were made on that note by some officers in the bank, but two different officers?
A. If made by any officer—by two different officers—the bank books will show everything there. If they came up and wanted to borrow two or three thousand dollars, I should have let them have it. You will find them all in renewals in the bank.
Q. Look at the note of October 27, 1881, and the check of Oct. 27, 1881, together—do you not know that they have connection with one another?
A. I don't know anything about it.
Q. As to the discount?
A. No, sir; I don't know anything about it; the bank folks will

know; there were so many discounts. You will find them all in the bank.

Q. Was not that check lastly mentioned paid on the note lastly mentioned?

114 A. I don't believe it was. I don't see how it possibly could be, because they refused to discount for that.

Q. After that became due?

A. Yes. They refused to discount any Leland paper, and it has shaken my credit very much in the bank.

Q. Look at the note of Oct. 27, 1881, again and see the writing in blue lead pencil, "Int. from date;" — if you know the handwriting of those three words in blue pencil and why it was put there.

A. Now, they wouldn't give them. That note when discounted wouldn't produce $3,000. They wouldn't give $3,000 on that because it is not drawn with interest from date. They take the discount out and it annoys people sometimes. The "Int. from date" is not in my handwriting.

Q. Whose handwriting are those three words in blue lead pencil?

A. I don't know.

Q. Do you know how or when they came to be written on that note?

A. I don't know anything about it. It has not been in my hands since I endorsed it.

Q. Was not, then, the check of October 27, 1881, given by Leland?

A. I don't know anything about it.

Q. To meet the interest of the note you speak of?

A. I don't know anything about it.

Q. It is the same date of the note.

A. It couldn't possibly be.

115 Q. You must have had the money on that check?

A. I put my name on it—yes. I must have carried it over to the bank some time or other.

Q. That note evidently was discounted. Can you say who paid the discount on it?

A. I don't know anything about it.

Q. The $3,000 note is marked "paid," all except the $46.50. Who paid that?

A. A renewal or some other way. The bank had it either renewal or money.

Q. Just look at all these checks.

A. I have, so many times.

Q. Don't those checks from your memorandum show that the interest and discount were paid by those notes?

A. They were used in the bank in some way on the renewal of other notes.

Q. Don't the checks show each of them by their amount that it was the interest on $3,000 for three months?

A. That I have not computed. That the bank will show.

Notes offered to Mr. Lynn for examination.

Mr. Linn requests that copies of the notes be given to him for his own convenience. Acceded to.

Q. There was a bond and mortgage given to you. You remember that?
A. I do, sir.
Q. That is in suit here. Did you ever have any interest on it?
116 A. Did the Lelands ever pay me personally any interest on it?
Q. Yes.
A. No, sir.
Q. Did you ever ask them for it?
A. I dunned them for it. They always gave promises, but no pay.
Q. Where—at Long Branch?
A. At Long Branch and New York.
Q. Which one of the Lelands did you ask for it?
A. The father and son—both.
Q. For the principal and interest?
A. For the amount they owed me.
Q. Did you claim the whole $4,500?
A. Everything they owed me.
Q. This particular mortgage?
A. Wanted them to pay up everything they owed. When the mortgage was given that note was——
Q. I didn't ask you that.
A. That was the difference, and the other made up the $4,500 and the other matter——
Q. I was not asking you to repeat. Did you specifically demand of Warren Leland, Jr., the interest of your mortgage at the end of a year?
A. No.
Q. At the end of the second year?
A. No; I tried to sell it.
117 Q. That is what you mean by demanding?
A. No, sir; he wrote me that I was hurting his credit by trying to sell the mortgage.
Q. How were you helping Warren Leland, Jr., as you speak of?
A. Well, I loaned them money. My check book shows it.
Q. How else?
A. Every way.
Q. You spoke of being interested in the Long Branch pier. How did that help Warren Leland, Jr., any?
A. It was my opinion that the year before the pier property which Messrs. Warren and Charles Leland bought in that property wouldn't have brought within two-thirds—other folks said one-half—of what it would after the pier was built. Then Elberon was not, to any extent. Long Branch was growing wonderfully under the influence of the pier.
Q. How did you help Warren Leland, Jr.?
A. The title of the property was in his name at that time.

Q. How came you to give in evidence the other day that you were helping him about the pier?

A. Because, properly handled, the business, the house, through the influence of the pier, would have been one-third or one-half greater than it was—the business of the Ocean Hotel; but the Lelands, Leland-like, would not take hold and get customers, as I thought they ought to have done.

Q. Then the interest you took, the interest in the pier, was to help Warren Leland, Jr., and not your $16,000 stock?

118 A. I commenced by subscribing $5,000.

Q. How came you to get $16,000?

A. Because they didn't pay up; the first was $5,000, then $5,000 more, then $5,000 more.

Q. You took it by piecemeals?

A. First we had to pay along.

Q. This pier is close by the Ocean Hotel?

A. Yes, sir. The hotel properly managed and the pier properly managed would make that property an extraordinarily valuable piece of property.

Q. In your judgment?

A. In my judgment.

Q. You wrote the papers for the pier property, didn't you?

A. I forget.

Q. You wrote the deed that Mr. Leland signed, giving him foothold there?

A. Not in my personal handwriting; it came through two engineers, and it got us into some trouble—the description.

Q. Didn't you get the papers wrong and get 600 feet somehow from there?

A. I didn't draw one of those deeds; they did—the riparian rights—the State drew them.

Q. Was the 600 feet deeded at first?

A. I think the riparian business from the State——

Q. What consideration did Leland get for that deed? Did

119 he get any money for it?

A. He got the house; he must have got a big consideration.

Q. Did he get any cash?

A. No.

Q. Did you deed it to the pier?

A. The company.

Q. Who was the principal stockholder at that time, do you know?

A. William Ottman was one; Job Johnson, the heaviest, was two; the Brewer man. I never had any more than others had; old Job Johnson was the heaviest. The papers will show; I can't remember.

Mr. LINN: These papers that we have proven are to be offered in evidence.

Redirect examination by Mr. LINN:

Q. Do we understand you to say that these four notes which have been offered in evidence on behalf of the bank, being the $3,000 note of October 27, 1881; the $3,000 note of November 10, 1880, on which the balance, only $46.50, is claimed; the $1,616 note of March 5, 1881, and the $1,000 note of January 14, 1880, have been in the bank's possession and owned by the bank since you delivered them to that institution?

A. Get the dates right.

Q. I have got the dates right.

A. I do not know who carried that——

Q. I want to know whether these notes have been, since you delivered them to the bank, the property of the bank for
120 the purposes for which they were delivered to it?

Objected to as calling for a conclusion which is illegal; the witness cannot swear to it.

Q. What do you say to that?

A. They have.

Q. Do we understand you to say that these notes were delivered by you to the bank as security for all of your indebtedness to that institution, whatever it might be?

A. The $1,000 note of Jan. 14, 1880, was; the $1,616.97, with endorsement thereon, also was, and the $3,000, with balance of $46.50, was discounted for the Lelands.

Q. That $3,000 of October 27, 1881, has been held by the bank since it was discounted by the bank?

A. Yes, sir.

Mr. Allen, on behalf of the defendant, desires the plaintiffs to admit that the Ocean Hotel, at Long Branch, is a licensed hotel, kept by Mr. Leland during all the years that have been spoken of.

Recross-examination by Mr. ALLEN:

Q. Is that your bank book you referred to in your evidence?

A. Yes.

Q. It extends from 1877. Will you look at it, so as to know? It extends from 1877 to, I think it is, 1882 in its accounts.

A. This book begins—is dated—1877, Dec., and the last bank transaction was Nov., 1882.

Q. And then it represents continuously your individual bank account with that bank?

121 A. Yes, sir.

Q. Look at the date of Oct. 27, 1881, in your book and see if there is an item in there which represents the amount of the $3,000 note. Oct. 27, 1881, is the date of the note. See if you find any other item representing that note to your credit. Do you find any item?

A. I don't see anything?

Q. Can you trace any item anywhere in the book representing that note prior to the date of its renewal?

A. I have not looked the book over.

Q. Look at your book, Nov. 10, 1880, and see if there is an item in it representing the note of Nov. 10, 1880. The note is dated Nov. 10, 1880. Which are you hunting for—the $3,000 note?

A. When do you want me to look for?

Q. Nov. 10 is the date of the note.

A. Well, 1880 is—May, June, October—October——

Q. October 28—what is that?

A. Simply deposit.

Q. Does it represent that note?

A. No; it can't be—possibly. November 8——

Q. Does that represent it?

A. I don't know anything about it.

Q. Nov. 11, 1880, has what item to your credit?

A. $2,998.77, and so on. Most of these were checks from the brokers—checks to me in Wall street.

Q. You don't trace any amount which represents that note?

122 A. No; I don't. I don't know how they marked it in the bank.

Q. You can't trace in the book any item representing the $3,000 note of Oct. 27, 1881?

A. No, sir; I can't trace anything of the kind. The bank books will show.

Q. Only those two were discounted, it appears.

A. Only those two.

Q. The other two were not?

A. Never.

Pass book offered in evidence as an exhibit by defendant's counsel.

Checks of May 14, 1881, for $45, of Oct. 27, 1881, for $48.50, of Feb. 12, 1881, for $45, offered in evidence, marked Exhibit D for identification.

Also letter of March 8, 1881, offered in evidence and marked Exhibit D for identification.

Also note of $1,593.07, dated Dec. 3, 1880, and memorandum of figures canvassed the other day on the cover offered in evidence and marked Exhibit D for identification.

Also note of July 20, 1880, for $1,000, offered in evidence and marked Exhibit D for identification.

123 EDMOND S. HAMILTON, being duly sworn, was examined and testified as follows:

Direct examination by Mr. LINN:

Q. Are you discount clerk of the Central National Bank of New York?

A. I am.

Q. How long have you been such?

A. Well, a number of years; I couldn't give the exact date; ten years or more.

Q. I show you a note bearing date October 27, 1881, for $3,000,

purporting to have been made by Warren Leland, Jr., payable to the order of John Fitch. Did you ever see that note before?

A. Yes, sir.

Q. Was it discounted at this bank?

A. Discounted at the Central National Bank; yes, sir.

Q. For whom was it discounted?

A. John Fitch.

Q. Was it or not one of a series of notes discounted and given one in renewal of the other?

A. It was; yes, sir.

Q. Since that note was discounted has it been in the possession of the bank—belonging to the bank?

A. It has been; yes, sir.

Q. I show you another note of $1,616.97, bearing date March 5, 1881, made by Warren Leland, Jr. Did you ever see that note before?

124 A. I have; yes, sir.

Q. Was that ever delivered to the bank?

A. It was delivered to the bank—yes.

Q. By whom?

A. By Mr. Fitch—John Fitch.

Q. Was it discounted by the bank?

A. No, sir.

Q. For what purpose was it delivered to the bank?

A. As additional collateral to his discounts.

Q. To claims which the bank held against him?

A. Yes, sir.

Q. Since it was delivered to the bank has it been retained by the bank?

A. Yes, sir.

Q. And is still held by the bank?

A. Yes, sir.

Q. I show you another note, bearing date Jan. 14, 1880, for $1,000, made by Warren Leland, Jr., payable to the order of John Fitch. Did you ever see that note before?

A. Well, yes; I have seen that note before.

Q. Was that note discounted by the bank?

A. No, sir.

Q. Was that note delivered to the bank by any one?

A. It was delivered to the bank by Mr. John Fitch.

Q. For what purpose?

A. As additional collateral.

Q. Claims which the bank held against him?

125 A. Yes, sir.

Q. Did Mr. Leland ever call at the bank and did you have an interview with him and Mr. Fitch in regard to these collaterals which the bank held against him?

A. I was not acquainted with Mr. Leland, but a gentleman was brought in and introduced as Mr. Leland, and we had a conversation in regard to the claims.

Q. What was said?

A. I made a memorandum at the time.

Q. Now, please state what took place—all that took place—between you at that time.

A. It was stated in the presence of Mr. Leland that if he paid—it was understood by me—he agreed to it in my presence—he was to pay $4,000 and interest from July 16, 1882.

Q. And then what was he to have?

A. We were to surrender to him the bond and mortgage for the $4,500 and of the Long Branch Pier Company. At that time they were in the shape of certificates of stock—$5,000.

Mr. ALLEN: Certificates of stock?

The WITNESS: It was receipts, and the note for $1,616.92 and the note which Mr. Fitch claimed has $46.50 due on it, $3,046.50, and this note of $3,000.

Q. At that time did you hold this $1,000 which has been shown you?

A. I don't think we did; I have no memorandum of it.

Q. That was given afterwards?

A. Yes, sir.

126 Mr. ALLEN (to Mr. Linn): It was delivered, you mean?

Mr. LINN: I mean given to the bank.

Q. What did Mr. Leland say in regard to that thing? Did he say he would make that payment at any time fixed?

A. He said he would pay. I think it was to be done very soon, as I understood it.

Q. Was it ever done?

A. No, sir.

Q. Do you know about what is the amount of John Fitch's indebtedness to the bank now, in round numbers?

A. It is, without interest, $9,500—about $9,300.

Q. In that neighborhood?

A. Yes.

Cross-examination by Mr. ALLEN:

Q. You have been discount clerk continuously for ten years and upwards?

A. Yes, sir.

Q. Of this bank you refer to?

A. Yes, sir; the Central National Bank.

Q. Can you tell us when it was that you had this interview with Mr. Leland in the presence of John Fitch?

Q. I can't give you the exact time, but my impression—I couldn't tell within a year—1883 or 1884. I omitted to date the memorandum.

Q. You have no memorandum of the date, then?

A. No, sir.

127 Q. Of that interview which you have given in evidence?

A. No, sir.

Q. You have said that you had a memorandum of that interview—you said that in your evidence?

A. Yes.

Q. Then repeat over that part of the interview which you put down as a memorandum, just as you have got it.

A. Mr. Leland was to pay $4,000 and interest from July 16, 1882, and the bank was to surrender to him the bond and mortgage for $4,500 and the Long Branch and Ocean Pier Company stock, $5,000.

Q. Just repeat your memorandum as you have got it down, *verbatim.*

A. W. L. Jr's note, $1,616.97, and one for $3,046.50, and one for $3,000.

Q. That is the way you have written it down in your memorandum?

A. Yes, sir.

Q. Did that interview take place in your private room?

A. It took place in the cashier's room.

Q. Who else was present?

A. Mr. Fitch was the only one.

Q. You three?

A. Well, I don't know how that was.

Q. I mean in the interview, or in the hearing of the interview, just you three.

128 A. I am not positive about that. I did not charge my mind particularly.

Q. When did you make the memorandum?

A. I don't know exactly when it was made; I think it was in 1883 or 1884.

Q. Was it made in the presence of Leland, at the time of the interview?

A. I made it at my desk.

Q. You made it afterwards, when you had separated?

A. That may be; most likely I did; but I put it down just as the agreement was, but whether Mr. Leland was present or not I don't know; it was done at the same time.

Q. Is it in lead pencil?

A. Yes, sir.

Q. Not signed by anybody, is it?

A. No, sir.

Q. But it is in your handwriting?

A. In my handwriting.

Q. And you are inclined to think it was made after Leland left?

A. I am not positive about that.

Q. You don't know that Leland saw it?

A. I don't think he did see it, because it was his agreement, just as——

Q. I mean to say you don't think Leland saw it, do you?

A. I don't think he did, because he wouldn't be likely to.

Q. Exactly. Did you know that Leland was coming?

A. I did not.

129 Q. On that occasion, I mean, before he got there, hadn't Leland been to the bank before, as you know of?

A. I don't know, sir, whether he had or not; he never had anything to do in my department, I know.

Q. Didn't Leland keep an account in the bank?

A. He had a small account there at one time.

Q. This same Leland that you had the interview with?

A. I presume so.

Q. There are two—one Jr. and the other Sr.; can you tell whether it was Warren Leland, Jr., or Sr.?

A. He was introduced to me as Warren Leland, Jr., I think; I am not positive about that.

Q. Is it the gentleman that is present here as Leland?

A. That I don't know; the Lelands all look pretty much alike to me.

Q. How long had Mr. Fitch owed this nine thousand and odd dollars to the bank—about, I mean?

A. You are speaking of this particular $9,300, because he had a series of discounts for a long time.

Q. You spoke of his owing the bank $9,000.

A. This $9,300 was the result. I think $4,000 that Mr. Leland was to pay and the $4,500 he had owed for a long time; then this $4,000 was discounted on March 13, 1882.

Q. Fitch had owed it?

A. Yes.

Q. So, then, he owed the bank since March 13, 1882, the $4,000 item you spoke of, or $4.500; which is it?

130 A. Both of them.

Q. Fitch owed the bank since that time both of those items?

A. And in addition $800.

Q. How long had John Fitch transacted business with the bank individually—about?

A. Up to that time or the present time?

Q. Up to that time, of course, he kept an account in the bank.

A. I can't tell without referring to the ledger. The discounts commenced about 1878.

Q. His individual account began then?

A. I don't know that without referring to the ledger.

Q. But his individual discount; you know that began about——

A. About 1878.

Q. And ended when? Kept on continuously, didn't it?

A. Yes; the last discount was March 30, 1882.

Q. Then did he have another account besides the discount account?

A. His account in the bank.

Q. That was an individual account, was it not?

A. Yes, sir; I have the discounts on my books; the book-keepers come to my books.

Q. Do you remember when the first of Leland's notes were discounted by Fitch?

A. You speak of the first note?
Q. The first note of Warren Leland, Jr., that Fitch endorsed and had discounted in this bank.
131 A. On March 17, 1879.
Q. What was that note—the amount?
A. $1,500.
Q. And then the Leland notes—Warren Jr.'s notes—were discounted for Fitch in the bank—by the bank?
A. Yes.
Q. They all went to Fitch's credit in his account, did they not?
A. Yes.
Q. Did you know anything about this pier stock or the vouchers which represented the pier stock you have spoken of personally or by Fitch?
A. I had them in my possession.
Q. Whether they were certificates or receipts.
A. Yes, sir.
Q. What amount of pier stock did they represent—50 shares or 45?
A. Fifty shares.
Q. About when did you first have them; do you remember?
A. I am not positive about that, but my impression is that I had them——
Q. Did you get them of Fitch? Did he deliver them to you?
A. Yes, sir; it was when that note of $4,000 was discounted—March 13, 1882. That is my impression.
Q. Delivered to you by John Fitch?
A. Yes.
Q. Did he endorse those vouchers or just hand them over
132 to you?
A. I don't know how that was; I don't know that they ever required endorsing. My impression is that they were endorsed in blank by Mr. Leland, but I am not positive about that.
Q. But Leland didn't hand them to you?
A. No, sir.
Q. Fifty shares were $100 a share; that would represent $5,000 on paper?
A. Yes, sir.
Q. Were those pier stock vouchers changed in form in any way?
A. Yes, sir.
Q. In what way were they changed—into certificates?
A. Yes, sir.
Q. About what time do you remember that that was done?
A. I didn't do it, but——
Q. Some other officer of the bank?
A. Yes, sir; the man who attended to it, Mr. Langdon.
Q. Do you remember about what time—a year or two years?
A. I don't remember without referring to the certificates. I have the certificates.
Q. You have the certificates; you have charge of them?
A. Yes, sir; they are in the box with the collaterals.

Q. When they were changed into certificates whose name were they issued to then?

A. Mr. Langdon's.

Q. William S.?

A. No; Edwin S.

133 Q. He is what you call the bond clerk of the bank?

A. Yes, sir.

Q. Why did you have them changed, do you know?

A. Because we wanted to collect the dividends, if there were any paid.

Q. Did you give Fitch any receipts for these vouchers when you first took them?

A. I don't think we did. We are not in the habit of doing that, as a rule.

Q. When did you first see the bond and mortgage in question?

A. I am in the same doubt as to that as I was to the certificates.

Q. About March 13, 1882?

A. I think so.

Q. Who had it?

A. Mr. Fitch handed it to me.

Q. He had it and brought it or delivered it to somebody?

A. It came into my possession immediately.

Q. Was there any other paper with this bond and mortgage when it was handed to you?

A. I think there was an assignment with it.

Q. Was Leland with him when he did that?

A. No, sir.

Q. You are a little hard of hearing, aren't you?

A. Yes, sir.

Q. How long have you been so—five years?

A. No.

Q. Three years?

134 A. Well, I don't know.

Q. About how long have you been affected in your hearing?

A. I hear well enough on my right side.

Q. About how long?

A. I don't know; I don't remember.

Q. Some time back?

A. Yes.

Q. Did you give Mr. Fitch any receipt to show for these notes which he delivered to you?

A. No, sir.

Q. Have you convenient a copy of Mr. Fitch's discount account? I see you have in your hand a sheet of paper; whether it is a correct copy of your book that you rely on. Is it such a correct extract from your book that you can rely on it?

A. Yes.

Q. Just look at that paper of March 13, 1882, or thereabouts, and see where that note was discounted and what amount went to the credit of John Fitch in his account?

Mr. LINN: March 13, 1882?
Mr. ALLEN: Yes, sir; he spoke about March 13, 1882.

Q. What went to his credit on March 13, 1882, within a few dollars?
A. About $8,300.
Q. Went to John Fitch's credit?
A. Yes.
135 Q. That went to his credit, less the interest?
A. The proceeds of this $8,500 went to his credit.
Q. What are those two items, "40, 45?" What do they represent—any of the Leland papers?
A. No, sir; they are his own notes.
Q. Then on that date he owed the bank—Fitch—about how much?
A. Well, he owed—there was about——
Q. Himself, I mean.
A. I don't know how the balance was in his account.
Q. This only shows the discount, and the aggregate account would be the discount proceeds and his other deposits?
A. Yes; the note of Leland's that was past due would be deducted from it, and this $4,500 would be deducted from it—the one that was past due.
Q. On March 13, 1882, did the bank hold the bond and mortgage?
A. My impression is that it was delivered at that time.
Q. Did it hold by assignment?
A. Yes.
Q. Did it hold the pier stock also?
A. Yes.
Q. And it held several notes that you have spoken of in your evidence?
A. Yes, sir.
Q. Two notes are discounted that you have spoken of?
A. They were discounted; yes, sir.
136 Q. And two were not, as I understand?
A. Two were not.
Q. Why did Mr. Fitch bring to the bank the two notes that were not discounted at the time you speak of?
A. Because we didn't think we had security sufficient for the $4,500 note.
Q. Can you tell us when he brought those two notes to the bank that were not discounted?
A. I cannot.
Q. Did you demand them of John Fitch?
A. No; I did not. I don't know what the president may have done.
Q. When I say you, sometimes I mean the bank.
A. This note was in the bank.
Q. The note of Jan. 14, 1880?
A. Was in the bank before it was due, but not in my possession. It came into my possession afterwards.

Q. What do you mean by saying the note of Jan. 14, 1880, of $1,000 was in the bank before it was due when it was not discounted?

A. Because it was left by Mr. Fitch in the bank for collection.

Q. Left before it was due, was it?

A. I judge so from his figures.

Q. What do those figures endorsed on the note as "8968," in your judgment, represent?

A. The number of the note.

137 Q. What does it betoken—a collection note?

A. Yes. If it had been discounted it would have had my endorsement on it, the same as this one.

Q. That is a collection note, is it?

A. I think that is his number, but I judge more from these figures. He always marked the maturity of his note in that portion.

Q. Now, you can give the reason, because the lead-pencil figures are about in the middle of the note.

A. Yes; each collection note is numbered the same as each discount note. The collection clerk has his own numbers and I have mine.

Q. Then it was left in the bank as John Fitch's property; not being discounted, it was not the bank's?

A. When it was first left for collection; afterwards it was turned over as collateral.

Q. When was it actually turned over?

A. That I can't say.

Q. After it was due?

A. Yes; it must have been after it was due.

Q. Then it was turned over to the bank by John Fitch?

A. That is my memory of it.

Q. That is your present memory of it?

A. Yes, sir.

Q. Can you tell us when you first saw the note of March 5, 1881?

A. No; I cannot.

138 Q. Do you know what is the reason of the endorsement of John Fitch's name being stricken off of it or when it occurred?

A. I don't know when he erased it, sir. I don't see any evidence here that it was lodged for collection at that time.

Q. You don't know anything about that branch of it, then, of your own knowledge?

A. No.

Q. You don't know anything about the endorsement, of your own knowledge? Do you see, there is one there that is not erased and there is one that is.

A. My opinion is that Mr. Fitch erased this endorsement, so that it would not be negotiable. I should judge that was the course, from the appearance.

Q. You can't tell when you first saw that note, can you?

A. No, sir.

Q. Of March 5, 1881?

A. No; but I must have had it at the interview with him, because I have it down here on my memorandum.

Q. What makes you believe that you had it at this interview, because you had it on this memorandum?

A. Because I took it off.

Q. As some of the vouchers?

A. Yes.

Q. At that interview that you say that Mr. Leland was present at and also John Fitch, with you, whether you had the notes and examined them, you, Leland, and Fitch, at the time
139 of the interview, at all—whether you had those notes and the bond and mortgage and examined them.

A. I may have had them out on my counter; I don't remember.

Q. And whether Leland and you or either one of you figured them up to see what the amount was.

A. No.

Q. Do you recollect, when you first saw the note, if those two receipts were on there or not for the part payment endorsed on the note?

A. I do not. This amount was not intended to give the amount due.

Q. I only wanted to call your attention to those receipts to see whether you identified them at that time or not.

A. I don't remember.

Q. The $1,000 note you have spoken of, not discounted, being left for collection, do you know how long it lay in the bank for collection—till it was due?

A. I do not. I had nothing to do with it.

Q. When the debt became due, not being paid——

A. It would either be protested or protected by Mr. Fitch; a collection note we wouldn't protest without his order.

Q. If he ordered you to do it you would?

A. Yes.

Q. Do you know anything about the history of the $1,000 note—what it represented?

A. No; I do not.

140 Q. Do you know whether there was another $1,000 given as a renewal of it at any time?

A. I do not.

Q. Do you know whether there was any other note connected with that $1,000 note of a less amount—$500?

A. I do not.

Q. Do you know whether — was another note of a larger amount connected with it, in which the $1,000 note was merged?

A. I do not.

Q. Of course, after the $1,000 note was given, I mean.

A. I do not.

Q. Have you any knowledge as to whether the $1,000 note got merged in that $1,616 note, by arrangement between Fitch and Leland, before this interview you speak of?

A. No, sir.

Q. Do you know of any record in the bank that shows any renewal of this $1,000 note?

A. I don't know.

Q. You don't know of any record in the bank showing any renewal of it whatever?

A. No.

Q. According to your business in the bank, whether, if there was a renewal of the $1,000 note in question, there would be any record of it in any other branches of the bank department.

A. Not unless we renewed it ourselves.

141 Q. Which clerk has charge of the collection notes—you?

A. Mr. Campbell.

Q. William?

A. I really don't remember his given name; there were two Campbells. If Mr. Fitch withdrew it before maturity the clerks would know nothing about it.

Q. Who has charge of the account which shows the full account of John Fitch in these years, his deposits and discounts, in the aggregate, the same as his pass book would?

A. I don't know.

Q. Would that be Campbell?

A. No; that is another man. Lee has charge of it now, and I guess *of it now and I guess* he had charge of it at that time.

Q. Benjamin F. Lee?

A. That I don't know; book-keepers change, you know.

Q. I only want his first name, so as to identify him.

A. As I have very little to do with them I don't get familiar with the clerks. I know his name is Lee.

Q. Look at the note of Nov. 10, 1880, where there is $46.50 claimed on it. Do you know how the $3,000 got paid?

A. By a renewal note.

Q. There is Warren Leland, Jr., present before you; is that the same gentleman that you speak of as the Leland at the interview?

A. I couldn't tell positively.

Q. Is this the same gentleman that was present at this in-

142 terview you speak of?

A. I never had an interview with him but that one.

Q. Can you identify him as the same man?

A. I don't know him?

Q. Can you identify him as the same man?

A. I don't think I could.

Q. That was the only interview with Leland that you had?

A. Yes, sir.

Q. I mean on this business—these notes?

A. Yes.

Q. Here is the bond and mortgage in question; they are exhibits in this suit. (Bond and mortgage shown witness.) Did you have those papers at the time of this interview that you speak of?

A. Yes, sir.

Q. But you don't know as they were examined at that time by Leland, Jr., and Fitch?

A. I don't know that they were brought out and remained in the presence of them at that interview.

Q. And there is the assignment; did you have that?

A. Yes, sir; I had the bond and mortgage and the assignment.

Q. How long had you had possession of the assignment before the interview?

A. It was about March, 1882, but I am not positive; that is as near as I can get at it.

Q. And then the interview took place how long before that?

143 A. My impression is it was 1883 or 1884; it must have been after July, 1882, because the understanding was the interest should be paid from that time.

Q. Do you remember whether you made any calculation or a memorandum of the amount which you said that Leland, Jr., agreed to pay?

A. Only $4,000 and interest when he paid it; we couldn't make any calculation until he paid it.

Q. I mean some memorandum for him and Fitch to take.

A. That would not be exactly businesslike.

Q. On that day it was $4,000?

A. Yes, sir; and interest.

Q. From that day?

A. From July 16, 1882.

Q. And the payment of that $4,000 and interest would cancel these vouchers you spoke of, all the notes and the pier stock and the bond and mortgage?

A. Yes, sir.

Q. When the first note came due that was protested do you know what was the amount standing to the credit of John Fitch in your bank, if any?

A. I don't know; that is out of my department.

Q. You see, it was protested such a day here—the 30th of Jan., 1882?

A. Yes.

Q. You do not know what was standing to John Fitch's

144 credit in his individual account on that date, because it was out of your department?

A. No, sir.

Adjourned.

(Endorsed:) U. S. circuit court, district of N. J. The Central National Bank of the City of New York, compl't, *vs.* Warren Leland and others, def'ts. In equity. Testimony of John Fitch and Edmond S. Hamilton. Jno. Linn, sol. of compl't. Filed Mar. 22, 1886. S. D. Oliphant, clerk.

145 United States Circuit Court, District of New Jersey.

THE CENTRAL NATIONAL BANK OF THE CITY OF NEW YORK
vs.
WARREN LELAND, Jr.

In case.

THE CENTRAL NATIONAL BANK OF THE CITY OF NEW YORK
vs.
WARREN LELAND, Jr.

In equity.

Testimony taken in the above cause on the part of the plaintiff and complainant this twenty-second day of July, 1886, at the office of John Linn, in Jersey City, in the presence of John Linn, attorney, solicitor, and counsel for the plaintiff and complainant, and Robert Allen, Jr., attorney, solicitor, and counsel for Warren Leland, Jr.

Due notice of taking this testimony is admitted.

EDWARD H. BALL, a witness produced on the part of the plaintiff, being duly sworn by Clarence Linn, notary public, of New Jersey, testified as follows:

Direct examination by Mr. LINN:

Q. Where do you reside?
A. The city of New York.
Q. Are you acquainted with Warren Leland, Jr., the defendant here?
A. I am.
146 Q. And were you acquainted with Charles Leland in his lifetime?
A. I was, sir.
Q. And are acquainted also with Warren Leland, Sr.?
A. Yes, sir.
Q. Were you ever at their hotel, in Long Branch?
A. I was, sir.
Q. Can you tell when?
A. Well, I believe in the neighborhood of 1869, 1870, or 1871—in that neighborhood.
Q. Do you recollect how long you remained there?
A. No; I couldn't tell.
Q. On whose account and at whose invitation were you there?
A. Charles Leland's; not one invitation, but numerous ones and very pressing.
Q. Did you have a child with you?
A. I did on one or two occasions.
Q. What were you doing there?

A. I was doing nothing there except of short duration during one summer, when I was there in the employ of the pier company.

Q. Were you ever copying any papers there for Mr. Leland?

A. I done some writing there.

Q. Were you ever there on account of Mr. John Fitch?

A. No, sir; I never was.

Q. Who paid your bills when you were there that were paid?

147 A. Well, I paid part of them. Those that were not, that I didn't consider that I owed. I paid them a bill of some sixty-odd dollars on one occasion, and some other moneys that I have forgotten.

Q. Why didn't you consider that you owed that?

A. Sir?

Q. (Repeated.)

A. Because I was there at their invitation—at the invitation of Charles Leland. This bill came in to me some months afterwards, and rather than have any controversy about it, as I was comfortably fixed at the time, I sent them a check; and Charles Leland subsequently told me that he was very sorry that it occurred; it was unbeknown to him.

Q. Were they ever authorized to charge any of your bills there to John Fitch?

A. No, sir.

Q. Was he in any way responsible for any of your bills?

A. In no manner or shape.

Cross-examination by Mr. ALLEN:

Q. How old are you, Mr. Ball?

A. Forty-one.

Q. Where do you live?

A. In the city of New York.

Q. Your business?

A. I have no business at present—for some time?

Q. What has been your business—lawyer?

148 A. No, sir; I have been connected with the law.

Q. Well, what office?

A. In the office of the register in bankruptcy, John Fitch.

Q. For how many years, and where?

A. Well, at 44 Wall St., 345 Broadway, 261 Broadway, from April, 1867, until the close of the bankruptcy law. I think it was in 1875 or 1876.

Q. In what way were you employed by him?

Mr. LINN: The bankruptcy law was repealed in 1876 or 1877, I think.

Q. In what way were you employed by him?

A. As managing clerk in bankruptcy.

Q. In his office?

A. Yes, sir.

Q. He was register in bankruptcy for all those years?

A. Yes, sir.

Q. In the city of New York?

A. Yes, sir.

Q. And he had considerable business, didn't he, during those times?

A. I worked day and night sometimes.

Q. Therefore you were familiar with papers—legal papers?

A. In bankruptcy I was. I considered myself an expert in the practice of bankruptcy.

Q. You consider yourself an expert?

A. In bankruptcy; yes.

Q. When was the first time that you were at the Leland
149 Hotel, at Long Branch, near about?

A. Let me see——

Q. I only suggested to you when was the first time.

A. I want to get at it; 1871, I think; while I was preparing their schedules and other papers in bankruptcy.

Q. For Fitch?

A. No, sir; for them.

Q. I thought you said you were working in bankruptcy for Fitch.

A. I was, but that had nothing to do with Mr. Fitch at all; he had nothing whatever to do with that. That work I done out of office hours, for them individually, at their special instance and request.

Q. You say "them;" which of them?

A. Warren Leland, Sr.; he took the most active part.

Q. Who were put in bankruptcy?

A. Warren Leland, Simeon Leland, and Charles Leland.

Q. That is a new man to me—Simeon Leland.

A. Well, he is dead; he was one of the firm of S. Leland & Co., proprietors of the Metropolitan Hotel. There were two sets of schedules, or rather there were five sets. There was Simeon Leland & Co., of the Metropolitan Hotel, New York; Leland Bros., of the Union Hotel, at Saratoga Springs, and individual schedules of each of them individually.

Q. Of each of the members of the firm?

A. Each of the members of the firm; five sets of papers.
150 They speak for themselves.

Q. That is the first time you were down at Long Branch?

A. Yes, sir.

Q. How long were you there—a week, two weeks, a month, or the whole season?

A. I couldn't give the exact time; the time was comparatively short.

Q. The time, then, was comparatively short? Were you there for succeeding summer seasons at Leland's Hotel, at Long Branch?

A. Yes.

Q. For how long?

A. Well, only for a short time; I couldn't give the exact time.

Q. When was the season that Charles Leland invited you to go down there?

A. Well, that was——
Q. Did he do it by letter or orally?
A. Orally.
Q. In New York city?
A. Yes.
Q. When was that?
A. I couldn't tell; it was pending the bankruptcy proceedings when I was there doing their work; that commenced in 1871.
Q. Well, how long did their bankruptcy proceedings continue?

151 A. Well, part of them are still hanging by the gills. The proceedings were had before Ardell Chase, register in bankruptcy, at White Plains, Westchester county, N. Y.

Q. Can't you give us the seasons you say he invited you down?
A. Well, that was the first season that I went there. I can't give the date. I think it was in 1871. I am pretty certain it was.
Q. In 1872 did he invite you?
A. Yes.
Q. In 1873?
A. Yes.
Q. In 1874 did he invite you there?
A. 1874? I won't be positive about dates.
Q. In 1875?
A. Yes.
Q. In 1876?
A. Well, that I couldn't tell.
Q. In 1877?
A. I know every time I was there was at Charles Leland's invitation.
Q. Tell us every time you were there.
A. I can't give you every date.
Q. Tell us every season you were there. Give us each season you were there at the Ocean Hotel—Leland's, I mean.

A. Not to exceed two, I don't think.

152 Q. Now, did you have anything to do with papers connected with the Long Branch pier?

A. Yes.
Q. What?
A. The original papers.
Q. What?
A. I drafted some at the dictation of Judge Fitch.
Q. What did Judge Fitch have to do with the pier?
A. Judge Fitch was a large stockholder in the pier and president of the pier company.
Q. Where did he have his rooms then?
A. 261 Broadway.
Q. At Long Branch?
A. At the Ocean Hotel.
Q. Which room was it?
A. I couldn't give you the number; on the piazza floor.
Q. Ground floor?

A. Ground floor.

Q. And that is where you did the business you speak of, or in New York?

A. I done that in New York. I done considerable writing there.

Q. You did considerable writing connected with the pier in Judge Fitch's room, at Long Branch?

A. I did.

Q. What season were those papers fixed up in?

A. I won't attempt to say.

153 Q. What do you mean by "original papers"—when the pier company was first organized?

A. Yes; when the pier company was first organized there was a great many interviews took place in Judge Fitch's office between the parties in interest—the Lelands, senior and junior, Mr. Ottman, Mr. Becker, Job Johnson, contractor; those were the principal.

Q. Now, when was it you paid any money for your board and lodging, as you say; what season was that in?

A. Well, the first season that I was there.

Q. How much was that payment?

A. Well, in round figures, it was about $60; a few dollars more, I think.

Q. Did you pay it by bills or by check, or in what way?

A. By check.

Q. In New York city?

A. Yes; if I recollect right, I gave the money to a gentleman by the name of Vandyke and from him got his check.

Q. Whom did you send the check to; whom was it payable to?

A. To Warren Leland, I think.

Q. Which one?

A. Leland, Senior.

Q. When did you make the next payment?

A. I don't think I made any large payment after that.

Q. Well, any small payment?

A. Small amounts from time to time, but I couldn't place them.

154 Q. What season would that be in?

A. That would be in subsequent seasons.

Q. Who asked for any of these moneys—the clerk or book-keeper, or who?

A. By letter.

Q. They sent you a bill?

A. Yes.

Q. That is, for all these payments?

A. Yes; that was the first intimation I had.

Q. They sent you a bill for all these payments you say you made?

A. Yes; and Mr. Charles Leland told me afterwards it was all a mistake.

Q. You ought not to have paid the money?

A. No.

Q. Because you went on his invitation?

A. That is it exactly. I never went down to Long Branch at the

invitation of Judge Fitch in my life. I went there once at his request as purser of the steamboat Adelaide, one Sunday, when she first went on the route. I acted as purser that day, the only time I ever visited Long Branch at his request or instance, and that was in the interest of the pier company and exclusively for their benefit and the Lelands'. The Lelands were very anxious to have the boat run down there on Sunday.

Q. When did Judge Fitch first employ you?

A. In 1867, I think; in April.

155 Q. Was that when he was first appointed register in bankruptcy?

A. Soon after.

Q. That was the first of your employment with Judge Fitch?

A. Yes, sir.

Q. And were specially connected with the bankruptcy business in his office?

A. Yes, sir.

Q. And that continued for how long—your employment with Judge Fitch?

A. Until the repeal of the law.

Q. Give us the year—five years, four years.

A. Yes; in the neighborhood of fourteen years.

Q. Continuously?

A. Yes. I am speaking now about the close of the case—the bankruptcy business.

Q. When did it cease; can you tell now? When did your employment with Judge Fitch cease?

A. It ceased about two years after the repeal of the law—after we had wiped out all the live cases in the office.

Q. Why did it cease?

A. By the operation of the law.

Q. Why did your employment cease?

A. Because there was no further business to be done with Judge Fitch.

Q. Did he pay you by the month, week, or so much per-

156 centage of the business?

A. By the week.

Q. Where do you live now?

A. I am going away very shortly up to Massachusetts, but a letter addressed to Judge Fitch's office, 261 Broadway, would reach me through him.

Q. Where is your place of abode at present—New York?

A. Yes; New York.

Q. What is the number?

A. 74 Bedford street, New York.

Q. You expect to go to Massachusetts—Boston?

A. No; to Lawrence.

Q. So you would get a letter there?

A. Yes.

Signature of witness waived by counsel.

CLARENCE LINN,
Notary Public, N. J.

(Endorsed:) U. S. circuit court, district of N. J. The Central Nat. Bank of the City of New York *vs.* Warren Leland, Jr. In case & in equity. Testimony of Edward H. Ball, taken upon notice July 22nd, 1886. Filed Jul. 26, 1886. S. D. Oliphant, clerk.

157 United States Circuit Court, District of New Jersey.

THE CENTRAL NATIONAL BANK OF THE CITY OF NEW YORK, Complainant,

vs.

WARREN LELAND, Jr., and Others, Defendants.

On bill to foreclose, &c.

Testimony taken in the above cause before me, William D. Campbell, a notary public, of New Jersey, at my office, at Long Branch, N. J., on January 29th, A. D. 1886, at ten o'clock in the forenoon, upon due notice, in behalf of the defendant, Warren Leland, Jr., in the presence of John Linn, Esq., advocate of the complainant, and R. Allen, Jr., Esq., advocate of the defendant, Warren Leland, Jr.

WM. D. CAMPBELL,
Notary Public, of New Jersey.

158 WARREN LELAND, Jr., a witness produced in his own behalf, being duly sworn, doth depose and say:

I reside at Long Branch, N. J., and am thirty-one years of age, and have lived in New Jersey continuously fourteen years, and have transacted business during that time in the hotel business at Long Branch—the Ocean Hotel. I have known John Fitch ever since I can remember—for last twenty years. I knew him in New York originally, and later at Long Branch. His business all the time I have known him was that of a lawyer. I believe he had something to do with the bankrupt court; they call him Judge Fitch. During the time I kept a hotel Fitch was a guest of the house, the Ocean Hotel, at Long Branch, first in 1879—in the summer season of 1879. The Long Branch Ocean Pier Company was organized in November, 1878. The pier was proposed to be located in front of my hotel. This John Fitch is the same person that is mentioned in the mortgage in this suit as mortgagee. John Fitch was the first president of the Long Branch Ocean Pier Company. It was proposed shortly after the organization of the company that John Fitch should be president of the company, and he so desired to be and so expressed himself to me as desiring to control sufficient stock in said company to guarantee such a result. I was a subscriber of the stock of the pier company to the extent of forty-five hundred dollars. John Fitch was also a subscriber of stock, but to what amount I do not know now. There were other numerous subscribers to the stock of
159 said company. Each share was a hundred dollars, subscribed for at par. John Fitch, desiring to control the stock, suggested to me that he should carry the stock standing in my name on the company's books, for which I should give him notes for the amounts,

and also give him the custody of the stock scrip as issued. That arrangement was consummated for the purpose above stated. I voted on the stock myself, but as he wanted me to vote.

Q. For what purpose was that arrangement made as suggested to you by John Fitch?

A. For the purpose of controlling votes at the election of officers in favor of John Fitch.

The officers of the Long Branch Ocean Pier Company, as proposed to be elected, were president, secretary, treasurer, and superintendent. These officers were to be elected annually. The first officers elected were John Fitch, president; Warren Leland, Jr., secretary; William Ottmann, treasurer; Warren Leland, Jr., superintendent. My impression is that John Fitch remained in the presidency for at least two years, and I think three years. Warren Leland, Jr., remained secretary for six years, and the other officers from two to three years each.

John Fitch was succeeded by Henry Iden, of New York city, as president; I was succeeded by A. A. Dame, of New York city, as secretary; William Ottmann was succeeded by Charles W. Held, of New York, as treasurer, and Warren Leland, Jr., was succeeded by Frank M. Taylor, of Long Branch, as superintendent of the pier. I think Taylor was employed from the organization. C. W. Held had charge of the books of the company when he succeeded Mr. Ottmann as treasurer of the company. All the books of secretary and treasurer, except the minute book of the meetings, — kept by the secretary, and Mr. Held still has those books. I had the minute book all the time I was secretary—five years, at least; six years. Mr. Held now has it. That minute book presents only the minutes of the meetings. John Fitch had possession of my stock and scrip. The certificates issued by the company were in his possession. Treasurer's receipts were originally given and were afterwards exchanged for certificates of stock.

160

When I let Fitch have my stock I did not put my signature, that I remember of, to any document denoting any transfer of it on paper. The business meetings of the company were held both at Long Branch and in New York—partly in Long Branch, mostly in New York. During the progress of the building of the pier the meetings were held mostly at Long Branch—at the Ocean Hotel. They commenced building the pier in the fall of 1878 and — was finished in the spring or early summer of 1879, and business has continued to be transacted at that pier ever since.

Q. State what other arrangement, if any, was made between you and John Fitch relative to that stock.

A. I have stated all the arrangement that was made. I have never seen the stock since.

161

Q. Explain what relation you had to this bond and mortgage in question.

A. Some months—yes, some five or six months after the issuing—I mean after the consummation of the arrangement as stated above with John Fitch, John Fitch asked me if I did not have some securities that I could let him take to place with his papers in his box at

his bank; he did not state what bank at that time. In astonishment, I asked him why he made any such request. He said it was simply to give him a more important financial status in said bank. I was particularly surprised because I considered him a man of very large means at that time, and he so informed me, as he had a great many times previously and subsequently to that time. I told John Fitch that I had some bonds of an issue that some time ago it was proposed to issue on the Ocean Hotel, but that the issue was never made, different arrangements having been negotiated. I told him, John Fitch, that those bonds were of no value and explained to him the reason why those bonds were of no value, and he told me he was familiar with it. The reason was because the mortgage loan which these bonds were intended to represent and pay off was not done and the mortgage lien remained; and those bonds did not become a valid and valuable lien on said property as a first mortgage, and a new loan was afterwards made on the property and we did not use these bonds. John Fitch said to me he knew these bonds had no value, but would answer his purpose. I had no hesitancy in humoring him in this matter and took to his office five of these old
162 bonds and left them with him at his office, No. 245 Broadway, New York city. Shortly after this said bonds were cancelled, wiped out, and the balance destroyed and the whole thing cancelled of record. Each bond was for one thousand dollars each; it was the original intention to issue one hundred of these bonds, based on a first-mortgage lien on the real estate of the Ocean Hotel property.

Q. Explain what you mean by the old bonds, and that all the bonds were cancelled.

A. I mean old bonds in the sense that, they never having been used and other arrangements having been made, *that* the transaction was old. I meant that all the bonds were subsequently cancelled.

Q. You say that Fitch got five of those bonds; where were the other ninety-five?

A. Pigeon-holed in my safe in the Ocean Hotel at Long Branch, N. J.

Q. Where was the mortgage that these bonds were based on during the time mentioned?

A. The mortgage was on file in the county clerk's office and the trustees named in the mortgage had possession of it.

Q. Did you ever get possession of the mortgage afterwards?

A. Yes, sir; this trustee mortgage was, as it stood then, I think, a third mortgage without the original mortgages being cleared off. When, in 1880, I desired to negotiate a new loan, a new and very beneficial loan to my interests, at a new and lower rate of in-
163 terest, I went to John Fitch and told him that I wanted those bonds which I had entrusted to him, in order to make said new arrangements. He told me he would get them and give them to me right away. He left the office to get the bonds, and after being gone about an hour or thereabouts he returned and said to me that he was very sorry and very much embarrassed to think that he did

not return with the bonds. He said that the bank did not refuse to let him have those bonds, but that it was a very delicate thing for him to take out those bonds without replacing in their place something else, and suggested that I make out a bond and mortgage to him for forty-five hundred dollars, and that the same would lay in his box in place of the bonds taken out, and that no interest would ever be demanded on the same nor would it be in any way, shape, or manner different to me than the bonds which he brought me. Having confidence and believing him to be a man of large means, I permitted his clerk to draw up such a mortgage briefly—his clerk, one Edward H. Ball, now a resident of New York city—and signed said mortgage. Whereupon he said he would take the bond and mortgage and put — in his box in the bank and bring back the bonds, which he did. No money consideration was ever received for said bond and mortgage. John Fitch assured me that no interest would ever be demanded or asked on said bond and mortgage, and that the same would remain in his possession without assignment or transfer, and that, as far as I was concerned, it would be the same to me as the original bonds—of no value—but that it would increase the importance of his papers at the bank, and that as he was a man
164 of large means, influence, and standing at said bank I need not hesitate to execute said bond and mortgage. What I want to express is this clearly.

I brought the five bonds Fitch gave back to me and I destroyed them in some way, to my recollection.

Up to the commencement of this action no interest has ever been asked or demanded by any person whatsoever, nor did I know that the complainants in this action owned or controlled or pretended to own and control said bond and mortgage until such demand was made on me by Mr. Linn, attorney for said bank, a few days before the commencement of this action.

Q. Were there any other papers passed between you and John Fitch at or about the time of the arrangement that he might control your stock; if so, what were the nature of them?

A. There was some notes I gave him originally, together with the custody of certain certificates of pier stock—the same certificates of stock I have been speaking of. There were two or three notes; I do not remember the amounts, but they aggregated, I think, nearly the amount of my subscription to the pier stock. There was no other papers in this matter except what I have spoken of, nor have I ever had any other business transaction of any kind with John Fitch before or since except as a guest of my hotel. I mean to say that I have never had any other business transaction of any kind or nature prior to or subsequent to this one with John Fitch other than accounts with him as a guest of my hotel. We started
165 a subscription book of the pier stock, and we all signed for different amounts. I think John Fitch's original subscription was five thousand dollars. He took certificates for the stock he subscribed for on the books of the company. John Fitch told me he was going to take the controlling interest of the stock and con-

trol the whole business. The total amount of stock as proposed was a hundred thousand dollars.

Q. What business transactions did you and John Fitch have together as a guest to your hotel and when did it begin?

A. In the winter of 1879 John Fitch told me that his official capacity as president of the pier company would take his undivided time and attention at Long Branch during the then coming season, and that he desired to be a guest at the Ocean Hotel, beginning when the hotel opened, and desired a convenient suite of rooms on the first floor, consisting of a parlor and bed-room, set apart and put in order for his accommodation on his arrival, which was done, and he took possession of the same June 12th, A. D. 1879, and remained a guest during that season, and became indebted to me during that summer for board, lodging, wine, cigars, cash, bar, restaurant, and other items, and also friends entertained, by names Vaughn A. Hern, Dickerson, Dodge, and E. H. Ball, his clerk, in total amounting to five hundred and sixty-eight dollars and seventy-two cents. The rooms that were occupied by Fitch were numbered 50 and 51, on the first floor—choice rooms in the Ocean Hotel that season.

Book shown witness and offered and marked Exhibit A on part of defendant.

166 Total on page of entry is $635.17.

This exhibit is transient ledger of Ocean Hotel. He owed the amount of $568.72 to me at the end of that season.

In the year 1880 John Fitch owed me for board, lodging, wine, washing, &c., &c., and Mr. Ball's account, five hundred and ninety-three dollars and eighty-eight cents. The items are entered partly in Exhibit A and in this book, which is also a transient ledger of the Ocean Hotel. (Book offered and marked Exhibit B on part of defendant.)

In the year 1881 John Fitch owed me for the season for board, &c., &c., five hundred and twenty-three dollars and twenty-nine cents. The items for that amount are in Exhibit "B."

In the year 1882 John Fitch became indebted to me for the season for board, &c., &c., four hundred and fifty-five dollars and ninety cents. The items of that amount are found in this book. (Book shown witness.) This is another transient ledger of the Ocean Hotel. (Book offered and marked Exhibit "C" on part of defendant.)

In the year 1883 said John Fitch became indebted to me by assignment from Warren Leland, Sr., of an account for board, &c., running from the first day of October, 1882, to the twelfth day of December, 1883, at the Leland Hotel, on Broadway and Twenty-seventh street, in New York city, in the sum of three hundred and seven dollars and twenty-one cents. This book is transient ledger of the Leland Hotel and contains part of the account and
167 the full account as brought forward from other ledgers. (Book offered and marked Exhibit "D" on part of defendant.) I know the fact that John Fitch was a guest at the Leland Hotel.

Warren Leland, Sr., was the proprietor of that hotel. I was employed then as assistant manager and was there every day.

Part of the entries in Exhibit "D" against Fitch is in my handwriting; part in writing of Mr. Harry Purdy, a clerk; part in handwriting of Mr. George Rodgers, a clerk, and part of writing Mr. Jesse Hipple, a clerk.

Q. How do you know that John Fitch owed the item of three hundred and seven dollars and twenty-one cents for board, &c., at Leland Hotel?

A. I know, because I was the manager at that hotel and was daily in the office and was familiar with all the accounts, and knew from my own personal knowledge that this balance of three hundred and seven dollars and twenty-one cents was due on the twelfth day of December, 1883. The transfer of this account, I think, was the following account, before this suit was brought by Warren Leland, Sr., to me, and was given in consideration of a claim against Warren Leland, Sr., for two thousand dollars in favor of Captain J. S. Lewis, of Geneva, New York, and paid by me.

Q. Did you have with John Fitch or he with you any conversation about this account?

A. John Fitch got weekly his bill from the office. He would open his bill in front of the office, and would say, "All right, all
168 right, all right," and walk out. The last payment John Fitch made on Leland Hotel account was November 3rd, 1883, cash, fifty dollars, and the same appears credited to his account. This was paid to Mr. Hipple on or about September 5th, 1883. John Fitch borrowed five dollars in cash, and the same was charged to his account, and he paid the same on September 26th, 1883, and credited on the account.

Q. Beside the cash items you have spoken of in your book entries above referred to, did he have or borrow any other moneys of you?

A. Yes, sir.

Q. State the amounts and time.

A. July 20, 1880, seven hundred and sixty-four dollars and fifty-nine cents.

August 3, 1880	$757 88
July 30, 1881	501 59
August 20, 1881	200 00
August 8, 1880	137 70
July 20, 1880	21 00
July 14, 1882	30 00
August 15, 1881	31 84

Q. Whereabouts were he and you when he had the above amounts?

A. In both New York and Long Branch.

Q. Whether he has returned to you any of the moneys last referred to?

A. No, sir.

Q. In connection with what and under what circumstances did he have them of you?

169 A. The vouchers will show—he asked me for it.

Q. What were the nature of the vouchers?

A. Bank checks, which I left with R. Allen, Jr., my attorney.

Q. Do you know what disposition was made of the pier stock certificates which were left with Mr. Fitch?

A. In 1883, in the fall, I think, about November, I accidentally heard that the Central National Bank had caused to be transferred to their stock clerk, so called, the shares of stock standing in my name on the Long Branch Ocean Pier Company's stock book; the number of shares was forty-five. That was done without my approval and consent, and I only heard of it from the fact that I was secretary of the company—had to attach the official seal of the company to the transfer—and the same was receipted for — the books of the company as follows: "The Central National Bank by blank blank, attorney." The name of the bank clerk who receipted for it I do not now remember. I was in New York when I got my first intimation of this being done. I put the seal of the company, or rather attested it as secretary, the new issue of stock given in transfer for stock to be transferred to bank. I do not know how the agent or attorney of the bank came in possession of the certificates of stock, but the first intimation I had of it was from Mr. Held. Mr. Held called upon me and told me that Fitch had given to the bank the stock standing in my name on the company's books, and the bank had asked for a transfer to their own name or the name of their stock clerk, and wanted to know if I knew and

170 approved of said transfer. I told him I neither knew or approved of it. Mr. Held at that time was treasurer of the pier company and had charge of the stock and transfer book of company, the books being at the Citizen's Savings Bank, corner of Canal street and Bowery, in New York city, where Mr. Held is cashier.

Q. Who had received the dividends on that stock?

A. I had received all the dividends up to that date ever declared on said stock.

Q. Had there been any really paid at any time?

A. Stock dividends were declared and paid.

Q. Had there been any actual earnings of the pier company prior to the time of your intimation of this transfer to the bank?

A. Yes, sir; the pier had earned a dividend every year.

Q. Was there any consultation between you and Mr. Fitch at any time — what disposition he might make of that pier company stock?

A. Mr. Fitch told me that that pier stock was in his possession and in his apartment or box, among his papers in the bank.

Q. Did you ever know from any of the bank officials that Fitch had disposed of that stock to the bank or any of its officers before the intimation you speak of?

A. I never did, nor did I ever have any intimation from anybody else?

Q. Did you have any demand made on you to pay any of

171 the notes or the bond or mortgage?

A. I never had any demand from any one, until the commencement of this suit, to pay any interest or principal on the mort-

gage and bond, and I declined to renew notes with Fitch because he was indebted to me in large sums.

Q. When did you first refuse to renew notes, as you speak of?

A. Well, I refused to renew notes after his indebtedness to me grew to be quite a sum. I do not remember the date.

Q. Did you not have any demand from the bank to pay notes?

A. Never.

Q. Was or was not John Fitch often at your hotel at Long Branch intermediate between the dates you have accounts against him?

A. He was at the hotel every summer, and as long as he was president of the pier company I used to meet him at the pier meetings. After he was not re-elected president of the pier company he withdrew from the meetings and I did not see him often, although he was still a director.

Q. Did he make any reference at the times you did meet him to the accounts which you had against him?

A. No, sir.

Q. Did you frequently meet with him in New York city?

A. No, sir; I did not see him very often. I saw him mostly in summer.

Q. Were you ever with him at complainant's banking-house?

A. At the solicitation of John Fitch I withdrew my account from the Broadway National Bank and took it to the Central Na-
172 tional Bank, at which time John Fitch took me to the Central National Bank and introduced me to the officers. I think that was the spring of 1879; possibly 1880.

Q. How long did you continue your account with the bank, about?

A. I kept my account with that bank about one year.

Q. Did you have any notes discounted for your accommodation in that bank?

A. Never. I never asked for one.

Q. Were you at the bank at any time inquiring concerning Mr. Fitch's box he had spoken to you about, seeking information as to the papers that you had entrusted to Fitch that you have already spoken of? If so, state your inquiry and who you conversed with and what transpired and about what time.

A. About the latter part of 1883 I heard rumors that John Fitch was not a man of such ample means as he represented; that he had speculated in Wall street and lost large sums of money. I became apprehensive of my papers left with him, and called at the Central National Bank to inquire in reference to his financial standing. I saw Mr. Wheelock, president or acting president of the bank, and asked him concerning the same. He told me that he had also heard rumors as regards Fitch losing money in Wall street, but that he did not consider that he was in any serious condition, and that the papers I had entrusted to him were in his box in the bank and in his, Fitch's, control and possession, and I left the bank with the im-
pression from what Mr. Wheelock had told me that I had
173 been unnecessarily alarmed. I also told Mr. Wheelock that

Mr. Fitch was indebted to me in large sums for book accounts and cash, &c., and that I was anxious for an accounting.

Q. What papers did you inquire for when you talked with Wheelock?

A. I inquired for a certain bond and mortgage on which this suit is based. I inquired about certain Long Branch pier stock and about certain notes.

Q. Whereabouts was Mr. Wheelock when you held this conference with him?

A. It was in the front private room of the bank; I presume the president's room.

Q. About how long were you there on that occasion?

A. I was there about twenty minutes during business hours on a business day.

Q. Did Mr. Wheelock intimate to you or not on that occasion that the bank held any securities or notes against you?

A. No, sir.

Q. Why did you not ask of Mr. Fitch instead of the bank officers for the information you desired?

A. Because I thought that if Mr. Fitch was in an embarrassed condition he would not be likely to tell me of it.

Q. Did you not often see Fitch about that time?

A. I saw him often in the summer; not so often in the winter.

Q. Did you at any time speak to Fitch for a settlement of these book accounts and claims you had against him or not?

174 A. I told Fitch that some day we must arrange our affairs and get everything fixed up in proper shape. He told me that everything would be all right, but from that time, about the beginning of 1884, he has ceased his familiar intercourse and I have seen him very seldom as compared with previously.

Q. For the last four years you have operated the Ocean Hotel, have you not?

A. Yes, sir; I have been continuously.

Q. Did not Fitch come to the hotel last season?

A. Yes, sir.

Q. When? How?

A. I do not remember the dates, but I do not think he was there over two or three times the whole season. He was there two Sundays. I think he remained, when there, for the most time, outside of the hotel, either on the pier or beach.

Q. Did you then have any conference with him about this bond and mortgage and the notes you have spoken of and the pier stock?

A. I did not. I did not get an opportunity. I intended to commence a suit in chancery against him as soon as the season closed, for an accounting of my stock and the annulling and cancelling of this bond and mortgage, and had consulted with my attorney on the subject. Prior, however, to the time the season closed this suit was brought.

Q. Whether or not during the times Fitch was at the hotel during the last year Fitch run any bills at the hotel or contracted any debt as a guest, that you know of?

175 A. I have not the ledger for 1885 with me. It is down to the hotel; but if he did the amount is very small.

Q. Whether or not any person for you inquired of the complainant bank in reference to the securities and papers, pier stock, bond and mortgage, and notes that you have spoken of?

A. One day when Warren Leland, Sr., was going to New York I asked him to call at the bank and inquire as to the financial status of John Fitch. He called at the bank as requested, and reported that the bank had told him that everything was all right.

Q. About what time was this?

A. I will not state positively as to the date, but I think it was in August, 1883.

Q. What prompted that inquiry?

A. A friend of mine had told me that Fitch had lost a great deal of money in Wall street, and that I had better beware of him.

Q. When did you first know that the bank held an assignment of this mortgage in question?

A. Three or four days only before the commencement of this suit, when I was so notified by the attorney of the complainants.

Q. In what way did you get the knowledge of the assignment?

A. By a letter of Mr. Linn, attorney of the bank.

Q. Was that the first and only intimation you had of the assignment?

A. It was.

176 Q. When was the first and only intimation you had that the complainant bank held any notes against you that John Fitch was payee in?

A. The same day and in the same letter from Mr. Linn.

Q. Did you take any papers or vouchers from Fitch at any time in reference to those notes, bond and mortgage, and pier stock?

A. I did not; no writing; no, sir.

Q. Explain why or by what inducement you trusted John Fitch with the papers and stock that you have referred to.

A. The only inducement was that he was to carry pier stock in my name on the pier company's books, and I had implicit faith in his integrity.

Q. Was any arrangement made between you and Fitch that the pier stock should be returned to you at any time?

A. The pier stock was to remain in my name and my property and simply in his keeping.

Q. For how long a time?

A. Until I demanded it back.

Q. How were you to be paid your claim, on book account or otherwise, against Fitch?

A. When the book account reached a considerable sum I was to charge it against his notes, and did so by refusing to renew said notes.

Q. Who applied to you to renew any notes?

A. John Fitch.

Q. What became of the notes?

177 A. They remained in his possession, and I had no intimation that they did not until a suit was commenced against me by the Central National Bank of New York—the same bank that is foreclosing this mortgage. The suit on notes is now pending in United States circuit court. The process in both suits were served on me the same day.

Q. You have put a defense in to the suit commenced on the notes, have you not?

A. Yes, sir.

Adjourned to Friday, February 5th, A. D. 1886, at ten o'clock a. m., at same place.

Examination of witnesses resumed at same place on Friday, — 5th, 1886, at ten o'clock in the forenoon, in the presence of John Linn, Esq., advocate of the complainants, and of R. Allen, Jr., Esq., advocate of the defendant, Warren Leland, Jr.

WARREN LELAND, Jr.—direct examination resumed.

By Mr. ALLEN:

Q. Where was that suit pending?

A. In the supreme court of New Jersey, ordered for trial at Monmouth circuit court during the January term of 1886.

Q. The notes in that suit are connected with what transaction between you and Fitch?

A. It was the same transaction and only transaction I had with John Fitch and the vouchers on the note suit and this foreclosure suit are all one and the same transaction.

Q. What checks have you bearing upon the transactions spoken of in your last answer?

178 A. I have the following checks, namely: July 20th, 1880, to order of John Fitch, signed by me and endorsed John Fitch, $21.00.

August 3rd, 1880, a check signed by me, payable to order of John Fitch, $757.88.

August 8th, 1880, check for $137.70; July 30th, 1881, check for $501.59.

August 15th, 1881, check for $31.48.

August 20th, 1881, check for $200.00.

July 14th, 1882, check for $30.00.

These checks are all made by me, payable to order of John Fitch, and endorsed by him; those checks are endorsed by John Fitch and are his genuine signature.

7 checks offered and marked Exhibits "E" 1, E 2, E 3, E 4, E 5, E 6, and E 7 on part of defendants.

I had another check for $769.59, under date of July 20, 1880, which is lost or mislaid lately; I think I let Mr. Allen have it with the other checks.

Q. Where are the checks you have referred to, had and used by John Fitch?

A. Yes, sir.

Q. Do you know whether he used them by endorsing his name on them or not or otherwise?

A. The checks all bear his endorsement save two—those bearing date July 30, 1881, and marked E 4 and August 3rd, 1880, and marked E 2; they do not bear his endorsement, because these
179 checks were drawn for a draft made by the Long Branch Banking Company, and read: Pay to New York draft John Fitch's note. They both read the same way. The whole substance of it is instead of my personal check being used a check of the Long Branch Bank was used, for which I gave my check for the amount.

Q. Explain how these checks you have referred to apply, as you insist, in satisfaction of the notes and mortgage that are in suit against you.

A. These payments were made to John Fitch and as such should be credited as against any moneys due John Fitch, if any, on any notes of mine, and as this mortgage is one and the same transaction as said notes and does not represent any money value given to me, and for that reason should be applied on the mortgage in case anything is due.

Q. Why did you give him the checks that you refer to when the items of your book account against him show on the face of them that there was due to you in season 1879, season of 1880, items of 1881, and season of 1882, and the dates of your checks were payable to him in the same seasons or thereabouts?

A. I gave John Fitch this money in exactly the same way as I advanced him board, lodging, wines, cigars, and &c., and considered his credit good for the same and charged the same to his account. Cash items also appear on board bills. He would come to me and I would give him cash and charge the same to his account, as is often customary with hotels to do, and guests imposing on
180 the good nature of the proprietor of a hotel, the same as I would supply him with a bottle of whiskey and charge it to his account.

Q. Whether any reference was made by you or him—between you and him—to the amount or any part of the amount of his account due to you, as you have stated, at the times you say you gave him those checks?

A. At the time the payments were made John Fitch told me he would give me credit for the amounts.

Q. Were you aware at those times in any way that he did not hold the notes or bond or mortgage or any of them so that he controlled them?

A. No, sir.

Q. Had you any intimation from any source at any time you refer to that he was not the owner of those notes or of the bond and mortgage or of any of them?

A. No, sir.

Q. Why did you not ask for any of those vouchers, notes, mortgage, or bond to be produced and the proper credits put upon them?

A. Because when John Fitch told me he would credit the amounts I believed what he said.

Q. Did you know at any of those times or did you have any intimation whatever that the complainants then owned any of those notes or the bond and mortgage?

A. No, sir.

Q. From your arrangements and adjustments of accounts and dealings with John Fitch are any of the moneys due, as
181 claimed by the complainant, on that bond and mortgage?

A. No, sir; emphatically, no.

Cross-examined by Mr. LINN:

Q. Who projected the building of the Long Branch ocean pier?

A. Job Johnson, of Brooklyn, and Messrs. McClay & Davies, of New York.

Q. Where was the Long Branch Ocean Pier Company organized—in New York or New Jersey?

A. It was organized under the laws of New Jersey, the subscribers to the stock being nearly all citizens of *New* Jersey City; the meetings were held at the office of John Fitch, No. 345 Broadway, New York city, and the company had their official office at John Fitch's office, by virtue of rental of room at his office or room adjoining or connecting.

Q. Who were mainly instrumental in having that company organized?

A. William Ottmann, Maclay and Davies, John Fitch, Samuel M. Jones, William L. McIntyre, William A. Conklin, and the other incorporators I do not remember at present without the list of the original stockholders. I was one of the incorporators. Those were not all of the original incorporators.

Q. Were you and your father actually engaged in promoting the enterprise?

A. We were small contributors, comparatively, to the capital stock and as such had considerable interest in its construction.

Q. Did you expect to derive much benefit from it aside
182 from the dividends upon the stock?

A. It was always a debatable point in my mind whether it would be any benefit to the Ocean Hotel or not or to me.

Q. Then am I to understand that you did not take an active part in the enterprise, expecting that it would be a benefit to the Ocean Hotel, of which you were proprietor?

A. I never was certain, in my own mind, from the day of conception whether it would be any benefit to me or not; many of my friends told me that it would and many more that it would not be.

Q. Why did you take so active a part as you did take in promoting the enterprise if you did not hope to realize any benefit from it to you in your business?

A. Because the organizers of the company proposed to place it in front of my hotel in preference to locating it in any other place.

Q. What was the amount of stock for which you subscribed?
A. Forty-five hundred or five thousand dollars.
Q. Did you pay the money for that stock?
A. Yes, sir; I paid it myself.
Q. Did you pay it in money or by checks?
A. Well, I do not remember whether I paid money or check.
Q. Did you pay it personally or did some one pay it for you?

Objected to by Mr. Allen as irrelevant to this issue.

A. If I remember correctly, John Fitch, as assessments became due on the stock, carried the stock for me in this way. He gave
183 me his check for the amount of assessment, for which I gave him a note, and I paid for and received a stock certificate; that explains it, I think.

Q. How many notes did you give him on that account?
A. I think three or four. I think they called for twenty per cent. first, then twenty per cent. more, then for forty per cent., and then for the balance. I think about four.
Q. How were those notes usually drawn—I mean payable—how long after date, and at what bank?
A. Those notes were usually in handwriting of John Fitch, payable to his order three months after date, and payable, I think, at the Central National Bank in the city of New York.
Q. Were those notes all paid at maturity?
A. No; they were renewed.
Q. Was there any understanding at the time those notes were given for how long a time John Fitch should carry the stock for you?
A. John Fitch said they could be renewed as often as he desired.
Q. Was that all the understanding there was about it?
A. That was all; he said he could renew the notes whenever they became due.
Q. Were any of those notes paid by you—I mean the original notes or renewed notes?
A. The original notes were paid by renewals, and those in turn were paid by renewals until I refused to renew them, about eighteen hundred and eighty-two—the latter part, I believe, of that year. I have paid checks to the amount of, payable to the order of
184 John Fitch's note, of $757.88 and $501.59 and $769.59.
Q. Were these checks which you have just mentioned given to pay your notes of those several amounts?
A. The checks so read on the face of them, and they must have been to pay notes of those amounts unless two checks were given to pay one note.
Q. Do you recollect of having given a note to John Fitch at any time for either one of the amounts named in either of the three checks which you have last mentioned?
A. I have no personal recollection of it now. I gave him notes, and in renewing them they were cut up in different amounts as John Fitch wanted them. I do not remember the figures of the notes as divided.

Q. Are you clear in your mind that the three checks last named were given in payment of a note or notes which you had given to John Fitch?

A. I am only clear in my mind so far as the vouchers with the bank endorsement on them as paid lay before me show.

Q. At the time you gave these notes or renewals did you understand that they were to be discounted at the Central National Bank of the City of New York?

A. I did not know what disposition that John Fitch made of them, but I presume that he had them discounted, although at the time I presumed that John Fitch was rich enough in this world's goods to need no discount from anybody.

Q. Have you taken up so as to have in your possession any of the notes or renewals which you gave to John Fitch?

185 A. Every note that was paid at maturity by renewals was sent by John Fitch to me in an envelope. I won't say every note, but that was the rule.

Q. When these were renewed who paid the discount?

A. I always paid him interest for carrying this stock.

Q. When and how did you pay him the interest?

A. Sometimes I paid him interest when he sent for me to come to his office to renew a note; sometimes paid him at that time; sometimes I did not pay him anything. The next summer he would figure out so much interest and hand it in and get paid. Sometimes—well, the long and short of it is sometimes I paid him in three months, sometimes six months, and sometimes in nine months.

Q. How did you pay this interest—by money or check?

A. By money and check both.

Q. Have you any of the checks by which you paid interest in your possession?

A. Yes, sir.

Q. Will you produce them?

A. These checks marked E 1 and E 5 must have been for interest.

Q. Any of the others?

A. I would like to get my stubs and I could tell exactly, because if they were for interest on the stub it would say for interest. This check, Exhibit E 5, seems to be interest on $2,000 for three months and three days—that is, figures so.

Q. You have given testimony in reference to certain accounts appearing upon the transient ledgers of the Ocean Hotel. Have

186 you any knowledge of the items of those accounts besides what you gain from the entries that appear there?

A. I know that every item and every charge that appear there is correct, because I was in the office daily and supervised all the books and know that the books are correct, and I know that John Fitch had every item that is charged there and consumed it. I mean every item there was called for by him and furnished by me.

Q. Do you mean to say that you can swear, from your recollection, that John Fitch had all the items that are charged in those several accounts, or am I to understand you to say that those are

correct and were had by him because you find them charged against him on the books?

A. No, sir; I know it. I will swear that those accounts are correct. If you want — to swear that I can remember the moment that a certain charge for telegrams of fifty cents were paid, I state I cannot remember at a stated moment, but I will swear that they were paid and that all these charges were paid and are correct, to my own personal knowledge.

Q. Can you recollect any other particular and specific charges that appear upon the books any more or better than you can recollect the telegram?

A. I recollect them all as correct; I recollect the accounts as correct.

Q. Can you name any items appearing upon the ledgers under date of June 26 to August 20, 1882, from your memory, without looking at books?

A. I am not a mind-reader or clairvoyant and have not memorized the transient ledgers of the Ocean Hotel for the last
187 six or eight years in detail.

—. Did you ever deliver to John Fitch a bill for any of these charges and demand payment?

A. No, sir; not up to the commencement of this suit; when he demanded payment of certain notes, the Ocean Hotel cashier made up a weekly statement for John Fitch and placed it in his pigeonhole in the room rack. It remained there several days, when I took it out and told the cashier to mark his credit A, and not render him a weekly bill. Whether he took the bill out of the box or not I don't know. He had access to it at all times. At the Leland Hotel in New York his credit was not marked "A," and his bill was rendered every week.

Q. I show you a note bearing date January 14th, 1880, for $1,000, payable to the order of John Fitch, purporting to be made by Warren Leland, Jr. Can you tell me who filled up that note and for what it was given?

A. It is my writing. It is a renewal of a note given originally when the pier company was organized, and John Fitch suggested to carry my stock of the pier company upon my giving him my note.

Q. I show you another note, bearing date November 10th, 1880, for $3,000, payable to the order of John Fitch, purporting to be made by Warren Leland, Jr. Can you tell me in whose handwriting that note is and for what it was given?

A. I do not know the handwriting of this note. The signature is mine. It was given for the same transaction as the one
188 stated above.

Q. I show you another note, bearing date March 5th, 1881, for $1,616.97, payable to the order of John Fitch. Can you tell me in whose handwriting that note is and for what it was given?

A. It is my handwriting. I can only say it is all one and the same transaction.

Q. I show you another note, bearing date October 27th, 1881, for $3,000.00, payable to the order of John Fitch, and purporting to be

made by Warren Leland, Jr. Can you tell me in whose handwriting that note is and for what it was given?

A. It is in my handwriting. This $3,000.00 is a renewal of the note for $3,000, bearing date November 10, 1880.

Q. Have you at any time stated to any of the officers of the Central National Bank of New York City that you were justly indebted on account of this bond and mortgage or any of these notes, naming some specific amount which you were willing or would pay?

A. No, sir; I explained to the contrary to Mr. Wheelock.

Q. Did you ever make a statement to any person in that bank, whether an officer or not, that you were indebted in any amount on any of these claims which you were willing to pay?

A. I never had any conversation that I can recollect with anybody except a bank officer. I believe his name to be Wheelock.

Q. Did you make any such statement to him?

A. No, sir.

189 Q. I think you testified that your father called at that bank on one occasion on your account. Was he authorized to speak and act for you on that occasion?

A. He had no authority to act for me, but he was to go there and inquire as to John Fitch's financial condition.

Q. You stated on your principal examination that when the book account reached a considerable sum you were to charge it against his notes, and did so by refusing to renew said notes. Was that a notion of your own, or did you so expressly agree with John Fitch?

A. I did not so expressly agree with John Fitch, but I refused to renew notes because said amounts had reached a sum large enough to set off or cancel amount of such notes.

Redirect by R. ALLEN, Jr.:

Q. What do you mean by said amounts by last answer?

A. I mean the amount of his bills and indebtedness to me.

Q. Exhibits E 1 and E 5—how do you know that represents any interest money or discount on any of these notes?

A. I do not positively without referring to my check-book stubs, which is not here, but at the hotel.

Q. Look at this paper (paper shown witness and marked Exhibit E 8 on part of defendant.) What is it?

A. It is the assignment to me of a board bill of John Fitch, which I have already mentioned in my evidence as claiming to be due to me; this assignment bears date August 1st, 1884, and is signed by Warren Leland.

Paper and assignment offered.

190 Q. In the cross-examination Mr. Linn has asked you about a $1,000 note and of a $3,000 note and of a note of $1,616.97 and of a $3,000.00 note. Explain what each one was given for.

A. The $1,000 note was given as a renewal of a previous note of like amount, and the $1,000 note was again renewed—that is, the first one of all was again renewed and put into a $3,000 note, and

this $1,000 note in question was not returned to me, but the amount of that note is in a note of $3,000.00. The $3,000.00 note, which consisted of the $1,000.00 note and other notes for $2,000.00, now the two $3,000.00 notes that Mr. Linn has exhibited—one is a renewal of the other. The one that was renewed John Fitch did not return to me. The note for $1,616.97 was a renewal of an original note of $1,500.00. The note of $1,500.00 was a renewal of a note of like amount.

Q. What was that $2,000.00 for which was added to the $1,000.00 note to make the $3,000.00 note?

A. That was the payment of other notes which I have in my possession. If I went down to my hotel I think and do not doubt that I could find twenty of them.

Q. What were these notes originally given for?

A. The pier business that I have spoken —.

Q. What is this paper? (Paper shown witness.)

A. This paper is one of the simple notes that I referred to. The body of it is in handwriting of John Fitch, the signature is mine, the endorsement is John Fitch's, and — is dated May 1, 1879, for $1,000.00. (Note offered and marked Exhibit E 9 on part of
191 defendant.) This note is another of them. (Note offered and marked Exhibit E 10 on part of defendant.) Note is dated June 16th, 1880, payable to order of John Fitch, for 577.42. Sometimes, at Fitche's request, I went to his office, in New York. He would cut up a note of a fixed amount into two or three notes, and sometimes he would request two or three notes put into one note.

Q. In whose handwriting is Exhibits E 9 and E 10?

A. E 9, the $1,000, is in John Fitch's handwriting; the other note, E 10, is in my handwriting.

Q. What was the $1,000 lastly mentioned connected with?

A. This is one of the original notes given in this pier stock transaction, and was given when the treasurer called for money from the subscribers to pay the contractor for building of the pier.

Q. Explain what connection the alleged note of January 18th, 1880, of $1,000, and the alleged note of March 5, 1881, of $1,616.97, referred to in the copy of the declaration in the case of The Central National Bank of the City of New York against Warren Leland, Jr., in New Jersey supreme court, which declaration is offered and marked Exhibit G on the part of the defendant, has to the bond and mortgage or the amount in question in this suit?

A. These notes are all one and the same transaction. The notes exhibited in this foreclosure case are the same notes on which the complainants are bringing suit in the United States court by removal from the State court.

192 Q. What relation has the mortgage to those two notes?

A. They all represent the same and the one transaction with John Fitch.

Q. If there is any credit or payment receipted or endorsed on any of said notes by John Fitch at any time was it done by your authority or not?

A. He told me he would give me credit, but I don't know whether he did or not.

Q. Did you see John Fitch endorse any payment on any of the notes and sign his name to it?

A. I did not.

Q. Do you know what amount he endorsed on any note, if he did so?

A. I did not.

The complainant is notified to produce for the inspection of the defendant all books, notes, vouchers, and writings in their possession or under their control *for the inspection of the defendant* that bear on the items and amounts and transactions between this defendant and John Fitch named in the mortgage and notes in question, at the office of Mr. Linn, at Jersey City, N. J.

Party reserves right to call this witness again.

WARREN LELAND, JR.

Sworn and subscribed before me this 5th day of February, A. D. 1886.

[L. S.] WM. D. CAMPBELL,
Notary Public, of New Jersey.

193 FRANK M. TAYLOR, a witness produced on the part of the defendant, being duly sworn and being examined by Mr. ALLEN, deposes and says:

I live on Long Branch and have lived here for thirty years. For the last six years I have been superintendent of the Long Branch pier. I know John Fitch; I have known him since 1878. I made his acquaintance at Long Branch. John Fitch was president of the pier company from 1879 to 1881. At that time the the other officers were Superintendent Warren Leland, William Ottman was treasurer and Warren Leland, Jr., was secretary. Warren Leland, Jr., held his position until last year. John Fitch always boarded at the Ocean Hotel ever since I knew —, in 1878. He was here last year, I think, not very frequently. I think he was here twice.

Q. Prior to last season, during the boarding season of each year, were you frequently at the Ocean Hotel?

A. Yes, sir.

Q. Why were you there?

A. I was connected with the house for three years.

Q. How do you know John Fitch was there?

A. I saw him; conversed with — daily. He was a guest of the house, a boarder there; occupied room on first floor for years. I was to his rooms a half dozen times a week.

Q. What part of the season was he at that house?

A. He was there all the season from 1879 up to 1885, inclusive.

Q. He was there the whole season except for a day or two at a time, when he would go up to New York. I mean up to 1885

194 inclusively—no, excuse me; I mean up to and including the year 1884.

Q. What is your knowledge of him as to the season of 1885?

A. He came down here once and I said, Judge, come down to see us. He said, No, I am going back to-night. The next time he came down he said he was a guest of Uncle Charlie's; he stayed a day or two, and that was the last I have seen — him.

Q. What relation as to location is the pier to the Ocean Hotel?

A. The pier is in front of the hotel,

Q. Whether John Fitch at the times he was at the hotel, which you have spoken —, did he manage any of the affairs of the Pier Company?

A. Yes, sir.

FRANK M. TAYLOR.

Sworn and subscribed before me this 5th day of February, A. D. 1886.

[L. S.] WM. D. CAMPBELL,
A Notary Public of New Jersey.

WARREN LELAND, Sr., a witness produced on the part of the defendant, being duly sworn and being examined by Mr. ALLEN, deposes and says:

I am the father of Warren Leland, Jr. I have known John Fitch since 1853 or 1854, in New York city; boarded at my hotel—the Metropolitan Hotel—from 1853 or 1854 to 1871. I have known him in New York and Long Branch up to date. I was
195 superintendent of the Long Branch ocean pier in 1879 and 1880, and was also one of the directors at that time. John Fitch was president and was president for two years. He made his residence and lived at the Ocean Hotel, at Long Branch, in the summer season; the seasons of 1879, 1880, 1881, 1882 he made his home there, to my knowledge.

Q. (Exhibit E 8 shown to witness.) Whose handwriting is it in, and what does the claim represent?

A. It is my handwriting; I signed it. It is a board bill against John Fitch, at the Leland Hotel, in New York, amounting to $307.21, which he owed to me at that date. This is my assignment of that claim to Warren Leland, Jr.

Q. Did you transact any business at any time with the Central National Bank of New York; if so, when?

A. I have made deposits there for Warren Leland, Jr., in the year 1879—the season of 1879. I knew the bank and its officers. I knew Mr. Wheelock at that time.

Q. What inquiry, if any, did you make of him at any time in behalf of Warren Leland, Jr., in reference to John Fitch and his business?

A. I knew that John Fitch transacted business with the bank, and I went there for Mr. Warren Leland, Jr., to inquire if securities of Warren Leland, Jr., that John Fitch held was there in the bank. Mr. Wheelock took me to one of the officers or clerks of the bank that seemed to have charge of collaterals and securities and he went

and brought a lot of securities belonging to John Fitch and stated that the pier stock that I inquired for, bond and mortgage I had spoken of, and also the notes of Warren Leland, Jr., was
196 there with Fitch's papers in the bank.

Q. What else took place on that occasion, and when was it?

A. It was reported, so far as they knew, Fitch was all right. They said there was queer reports circulated about a good many people. This was in the fall of 1882 or 1883; it was just after Wheelock had ceased to be president of the bank, but he was there that day.

Q. Did any of the officers of the bank intimate to you that the bank held any claim against Warren Leland, Jr., by note or mortgage or otherwise, at that time?

A. They did not.

Q. Why did you go and make inquiry at the bank concerning Fitch or Leland, Jr.?

A. Because I had heard a report that John Fitch had lost heavily in Wall street, and I reported it to Warren Leland, Jr., who said he had heard the same thing, and said he wished I would go up there and — if the securities were in the bank where Fitch had represented them to be.

Q. Whether from your own knowledge John Fitch was interested at times in behalf of this bank?

A. He was; he kept his account there and solicited accounts for the bank. This was in 1878 and 1879. He was on intimate terms with the officers of the bank, especially Mr. Wheelock. He brought him to Fitch's office to a preliminary pier meeting. He remarked when he came in that this gentleman can tell you that I am capable of taking the whole pier company stock and build another
197 one, if he wanted it. Mr. Wheelock stated to us whatever Judge Fitch stated to us we could depend on.

Q. What was Fitch's reputation as to ability and means, during those years, in New York city and Long Branch—I mean general reputation?

A. His reputation was a man of large means, as to money.

Cross-examined by Mr. LINN:

Q. When you had this interview with Mr. Wheelock did not he or some other person in the bank give you to understand that this bond and mortgage and stock and these notes or some of them were held by the bank?

A. They did not.

Q. Did you represent to the bank or its officers that Warren Leland, Jr., was willing to pay or would pay any certain amount to get up these securities?

A. I did not.

Q. Have you stated now in your testimony the substance of all that was said or took place on that occasion?

A. I have, as near as I can now remember.

Q. Do you know what encumbrance there is upon this property, covered by mortgage, in suit prior to it?

A. I believe a fifty-five-thousand-dollar mortgage.

Redirect by Mr. ALLEN:

Q. What is the value of that property the mortgage is on, in your judgment, in your opinion—I mean the real estate?

A. I think it is worth about $125,000. I think there — 700 feet ocean front and about twelve acres in territory.

198 Q. At the interview you had with the bank officers that you have spoken of did any of them intimate to you that they had any claim or lien in any way on the bond or mortgage or notes in question?

A. They did not at any time.

Q. Was you present and familiar with the organization of the pier company and subscription of stock?

A. I was.

Q. Do you know anything about the notes and bond and mortgage in question?

A. I do. I know that the notes were given by Warren Leland, Jr., to John Fitch for the money for his carrying $4,500 worth of pier stock for Warren, the object of which was to give Fitch control of that much stock to elect himself president. I know that Warren Leland, Jr., left with John Fitch five bonds on the Ocean Hotel property, which were afterwards returned, and Fitch got a mortgage for $4,500 on the hotel property, which Fitch wanted to use in his strong box in the bank, as he called —.

Q. What relations have the notes you talked of to the mortgage, if any?

A. The notes and mortgage were given for the same thing.

WARREN LELAND.

Sworn and subscribed before me this 5th day of February, A. D. 1886.

[L. S.] WM. D. CAMPBELL,
Notary Public, of New Jersey.

199 Examination adjourned to Friday, February 12th, A. D. 1886, at ten o'clock in the forenoon, at office of John Linn, Esq., No. 47 Montgomery street, Jersey City, N. J., by mutual consent.

Examination of witnesses resumed at office of John Linn, Esq., No. 47 Montgomery street, Jersey City, at ten o'clock in the forenoon, on February 12, 1886, in the presence of advocates for complainants and defendant.

JOSEPH S. WHEATON, a witness produced on the part of the defendant, Warren Leland, Jr., being duly sworn, *and* upon examination by Mr. ALLEN deposes and says:

I am thirty-two years of age; I live at Vanderbilt Hotel, New York city; my business is hotel clerk. I have known Mr. Leland,

Jr., ten or twelve years and John Fitch eight or nine years. I have known them both at Long Branch and New York city. Mr. Leland, Jr., has always been in the hotel business, as far as I know. Mr. Fitch I have known as a lawyer and president of the Long Branch Ocean Pier Company for two years I know of.

Q. What business relation had you with Warren Leland, Jr.?

A. Clerk at the Ocean Hotel, at Long Branch, from the year 1876 to the present time, in the summer season, except the season of 1882.

Q. Prior to last season was John Fitch a frequent guest at the Ocean Hotel, the defendant's hotel, at Long Branch?

A. He was there every season that I was there, except last season.

200 Q. Describe what kind of a guest was he as to time.

A. He was a permanent guest and had his rooms engaged as a permanent guest in the hotel each of those seasons, except last season?

Q. Where were his rooms?

A. He had rooms on the ground floor, near the office.

Q. How were those rooms, as compared with other rooms, as to price and location?

A. They were medium price, and were among the best located and convenient rooms in the hotel.

Q. (The copies of the books shown witness.) Where you familiar with the books of the hotel?

A. Yes, sir; I kept the books, with some assistance, and made most of the entries in the books against guests of the hotel.

Q. During the seasons you speak of?

A. From the year 1880—since and including 1880—except the year 1882, that I was away.

Q. During the time you were there was those books kept correctly, as to entries and amounts?

A. Yes, sir.

Q. Now, did John Fitch have any person with him as a clerk or companion during those seasons you speak of?

A. Part of the time.

Q. Do you know who it was?

A. I remember one—a man by the name of Ball.

Q. Do you know whether Fitch whilst he was president of the pier company transacted business in his rooms or not?

201 A. I do not know.

Q. Have you examined these statements?

(Copies of Exhibits "A," "B," "C," & "D" shown witness.)

A. I have looked over them, and, as far as I can see, they are correct, but I do not speak of the year 1882, when I was absent. I am now speaking of Exhibits "A," "B," & "C." My opinion and belief is they are all correct. I was clerk at the Leland House, in New York. I went there in the fall of 1883, and believe Exhibit "D" to be correct. I had partly charge of the books there.

Q. Was John Fitch a guest of that hotel?

A. Yes, sir; during all the time I was there.

Q. What do you mean by saying they are correct? Do — mean correct copies or what? Explain.

A. Looking at them, I think they have been taken from the ledgers as the entries were therein made. It is the way we generally make entries in the ledger.

Q. Were the books correctly kept at the New York hotel, from your familiarity with them, in your opinion?

A. As far as I know and while I was there they were.

Cross-examined by Mr. LINN:

Q. You say, so far as you know, the entries in these ledgers were correct, and many of them, if not all, made by yourself. What authority had you for making the entries and what evidence had you that the charges were correct?

A. I was there as chief clerk of the hotel, and would take those charges from checks made out either by myself or assistant clerk.

202 Q. Who gave you the information from which you made those checks?

A. Sometimes he—that is, Judge Fitch—gave the orders himself; sometimes the order through a bell-boy.

Q. How was the Ocean Hotel kept; on the European plan or American plan?

A. American plan.

Q. Was there a restaurant connected with the hotel?

A. Yes, sir.

Q. Did the guests take their meals in the restaurant or at the hotel table?

A. Hotel table.

Q. If they obtained anything in the restaurant how did you get the information as to how to make a charge for that?

A. Well, we had regular numbered restaurant checks, and guests generally wrote their own orders on the checks and that came to me to be charged afterwards on the ledger.

Q. Did you deliver personally any of the articles charged in any — those accounts personally to Mr. Fitch?

A. I do not know anything, unless it was money. The other items were not of my line.

Q. I suppose you do not know personally whether he actually received any of these things, do you?

A. I never saw them delivered. I saw them on the way to his rooms.

Q. Do you mean to say that you actually saw all of the items charged on these accounts on the way to his rooms?

203 A. No, sir.

Q. Were all of the items contained in these accounts obtained from checks or were some of them put down upon your being informed by some employees of the hotel that the articles named had been ordered by Mr. Fitch or had been sent to his rooms?

A. There are a great many items here that come outside of checks, but always had some voucher of some kind for them.

Q. What was done with the vouchers you say you had for some of these items?

A. Keep them in the office; some in drawers and some in books.

Q. Can you name any item in any of these accounts which you now recollect John Fitch directed you to charge against him?

A. Well, you just mean his board bill or items we had vouchers for?

Q. I mean do you now recollect any item in all of these accounts which you can swear that John Fitch personally directed you to charge to his account?

A. I can't specify any item. I know he told me a great many things to charge to him, but I can't tell what they are now.

Q. Were these books kept entirely by yourself or only partly by yourself?

A. Partly.

Redirect by Mr. ALLEN:

Q. You have used the word ledger in reference to the books just mentioned—whether they were books of original entry or not.
204 Were they the first books you made entries in or were they copied from other books?

A. They were both.

Q. Explain how they were made up.

A. When a guest arrived at the house we would take his name from the register to the ledger. That is what I mean. If we lent a man cash the entry would be made in the cash book, and from there would go to the ledger. Then we would transfer from vouchers to the ledger.

Q. What became of the vouchers? Explain what they are and what became of them.

A. They are generally small slips of paper—wine cards or something of that kind. They were kept in different drawers in the office.

Q. What became of them eventually at the end of the season? Any care taken of them, or let them go hap-hazard, anywhere?

A. We generally cleared the drawers out when they got full. They were tied up and put into another drawer. I do not know what became of them after that.

Q. This register you spoke of was used for what purpose only?

A. Only for the purpose of having a guest enter his name on arrival at hotel, the time of his arrival, and number of his room.

Q. Fitch did not take his meals anywhere else than at the hotel that you know of, did he? Did he merely sleep there, and eat and drink elsewhere?

A. While he was stopping there he took most of his meals
205 there.

Q. Whether during the times you say he staid during the whole season as a guest did he pay you, or do you know of his paying any moneys on his bills?

A. I do not remember of any time. I can't recollect any.
Q. You would know if he did?
A. Yes, sir.
Q. Whether all proper credits that you know of, if any, are given to him on his bill.
A. As far as I know they are.
Q. Do you know whether Fitch entertained any friends or not at the hotel at his own expense?
A. He had some friends there; one I specified before—Mr. Ball.

JOS. S. WHEATON.

Sworn and subscribed before me this 12th day of February, A. D. 1886.

[L. S.] WM. D. CAMPBELL,
Notary Public, of New Jersey.

Examination adjourned to Friday, February 26th, A. D. 1886, at ten o'clock, at office of John Linn, Esq., No. 47 Montgomery street, Jersey City, N. J., by mutual consent.

Examination of witnesses resumed at office of John Linn, Esq., No. 47 Montgomery street, Jersey City, N. J., at ten o'clock in the forenoon, on February 26th, A. D. 1886, in the presence of
206 John Linn, Esq., advocate of complainant, and R. Allen, Jr., advocate of the defendant, Warren Leland, Jr., and by mutual consent adjourned to the Citizens' Savings Bank, corner Canal street and Bowery, in New York city, where the testimony of Charles W. Held was taken.

CHARLES W. HELD, a witness produced on the part of the defendant, being duly sworn according to law, *and* upon examination by Mr. ALLEN deposes and says:

I reside in New York; my business is cashier of the Citizens' Savings Bank of New York, and I am also treasurer of the Long Branch Ocean Pier Company, and have been such treasurer since 1880. I am acquainted with Warren Leland, Jr., and have known — for about ten years. I have known John Fitch, also known as Judge Fitch, since my connection with the pier company in 1880.
Q. What connection or relation had John Fitch with the Long Branch Pier Company, as far as you know?
A. He was originally president and director. He was president up to the fall of 1880, and Mr. Iden succeeded him. Whilst John Fitch was president Warren Leland, Jr., was secretary of the pier company, and remained so until 1884. William Ottman was treasurer until the fall of 1880. I succeeded him and remain in office still. The treasurer has charge of the stock book of the company, and I have had it since I have been treasurer; that book represents all stocks issued and transferred for shares of the pier company I speak of. John Fitch had originally subscribed for one hun-
207 dred and ten shares, as appears by the books—the stock ledger delivered to me. He had at one time, as appears by

the book, and subsequently he owned a hundred and ninety shares of the stock.

Q. How did Fitch subsequently stand as to ownership of shares of the pier company?

A. I can't give that, only so far as pertains to this suit. It would not be proper to give information as to Fitch's private business outside of what pertains to this suit.

Q. Just state how many shares Warren Leland, Jr., originally subscribed for, as you gather your information from the books delivered to you.

A. Fifty-five shares; March, 1880, was the time. These subscriptions to stock originally were paid for *pro rata* or by installments. Temporary receipts were given as payments were made, and when stock was all paid for, then certificates of stock were given and issued and on application delivered.

Q. What became of that scrip of Warren Leland, Jr., as far as you know? I mean stock certificates?

A. They were delivered to Warren Leland, Jr., as far as I know.

Q. What disposition was made of them from that time on down, as far as you know?

A. On November 22, 1883, certificates of fifty shares of this stock were presented to me to be transferrred to Edwin Langdon.

208 Q. Who demanded that?

A. Mr. Edward Langdon. He brought them and left them here to be transferred to him. New stock was subsequently issued to him on November 22d, 1883, and was delivered to him on December 25, 1883.

Q. What memoranda did you make of that transaction?

A. Well, there is the stub of the stock book, which shows, as written by me at the time of the transaction, which reads as follows:

No. 162. (50) fifty shares. Dated Nov. 22, 1883. Issued to Edwin Langdon, N. Y., in place of cert. No. 17. Received the above-described certificate Dec. 15th, 1883.

THE CENTRAL NAT'L B'K,
By E. LANGDON.

This applies to Warren Leland, Jr., stock that I have been talking about.

Q. What became of the old certificates?

A. I have them here; the other five stand to Warren Leland, Jr., on my books.

Q. Were you often at Long Branch during the summer season?

A. I was, during the summer seasons from 1880 to 1885, at the Ocean Hotel.

Q. Was Nov. 22, 1883, the first time application was made for the transfer of Warren Leland, Jr., stock to you or not?

A. It was, as far as I remember.

Q. Whether either John Fitch or Warren Leland, Jr., had spoken

to you in reference to the intended transfer of this stock before Nov. 22, 1883.

209 A. No, sir.

Q. Did you often see Mr. Fitch frequently around the Ocean Hotel at Long Branch?

A. Yes; in former years he was very active in reference to promoting the Long Branch Pier Company. In former years, while president of the pier company, I have known him to board at the Ocean Hotel. In former years he had rooms on the ground floor.

CHAS. W. HELD.

Sworn and subscribed before me this 26th day of February, A. D. 1886.

[L. S.] WM. D. CAMPBELL,
A Notary Public of New Jersey.

Examination adjourned to office of John Linn, Esq., No. 47 Montgomery street, Jersey City, N. J., on Friday, March 5th, A. D. 1886, at ten o'clock, by mutual consent.

Examination of witnesses upon the part of the defendant, Warren Leland, Jr., resumed at the Ocean Hotel, in Long Branch, at twelve o'clock noon on July 30th, 1886, in the presence of advocates for complainant and defendant, upon due notice.

JAMES A. JOHNSON, a witness produced on the part of the defendant, being duly sworn, deposes and says:

I am thirty-six years of age. I am employed by Warren Leland, Jr. I was first employed by him in 1881 as second bellman in the Ocean Hotel at Long Branch, and am so employed now as head bellman. I have always been employed by Warren Leland, Jr.

210 I know John Fitch, commonly called Judge Fitch. I have known him since 1881 at the Ocean Hotel, and after that in New York. I was not at the Ocean Hotel — 1882; other seasons since 1881 to the present time I have been here. In 1881 I was employed and there in this hotel from May 17 to September 7, 1883. I was employed and was here the whole season as long as the hotel was open, and was each succeeding season to the present time. Judge Fitch was here in 1881, at this hotel. In the season of 1882 Judge Fitch was here, but how long he stopped I could not tell. He was here that season. I know he was here more than a day or two, but the length of time I could not tell. In 1884 Judge Fitch was also here. In 1881, as far as I could hear of the judge's talk, he was somewhat interested in this pier across here. The way I know that—in the night Judge Fitch would be out on the pier walking around, and I afterwards inquired of one of the men what Judge Fitch was doing walking around so much of nights. His reply was he was somewhat interested in the pier. I afterwards inquired of Judge Fitch how was business. His reply was, Very slow in regard to boat business. That is all the conversation I remember, of having with him. He

occupied room 48 on the ground floor, seven or eight rooms from the main entrance. As near as I can remember, he occupied two rooms. I remember carrying ice water to him very often, which he would order. I have been in his rooms. Judge Fitch occupied the rooms. I remember one time of his having some gentlemen
211 there once; I cannot remember their names. I cannot remember a man by the name of Ball. I can't remember whether he had anybody with him when he came here. He stayed in his room and ate here in this hotel. I saw him at the table. I saw he was supplied by the house. Mr. Warren Leland, Jr., and Charles Leland were the proprietors, as far as I knew. Warren Leland, Jr., employed and paid me. In 1882 he had a man by name of Lee as head bellman, and I did not want to work under Lee.

J. A. JOHNSON.

Sworn and subscribed before me this 30th day of July, A. D. 1886.

[L. S.] WM. D. CAMPBELL,
A Notary Public of New Jersey.

JAMES P. THROCKMORTON, a witness produced on the part of the defendant, and being duly sworn, deposes and says:

I am near forty years of age. I am connected with Thomas Northley; we run stages to the Ocean Hotel. I have been familiar with the Ocean Hotel since 1879, and have been here every boarding season since. I know Warren Leland, Jr., and the other Lelands connected with the hotel. I know Judge Fitch. I have seen Judge Fitch at this hotel in 1879, and some seasons afterwards. I don't know how many; probably three or four. I came to notice him, he being president of the pier company the season the pier was built; we, Northley and myself, done some work for them. I became personally acquainted with him well; he seemed to be
212 officiating in the building of the pier and stopping at this hotel. He occupied rooms somewhere close to the baggage stand on the first floor. I should think they were important rooms like these near the main entrance fronting the pier. I do not know the number of the rooms; they were valuable rooms as rentable value. I do not know whether he occupied one or two rooms. I had been in the rooms transacting business with him. He occupied them three or four seasons. The average length of the season is about three months. Judge Fitch, I supposed, lodged and eat here. He had rooms. I have seen him in the dining-rooms eating. I seen a man here by the name of Ball in company with Fitch in his room. Ball, it seems to me, was here two seasons; Fitch here at the same time. I saw him in Fitch's rooms; whether he slept there or not I do not know. Fitch had carriages and rode in the stages, too, I suppose, for his own use. The carriage account was all charged in the office. I don't know that we got any pay; if we did he got it through the office—the hotel office. When Fitch spoke for or engaged the carriage he would always say have it charged to his account or room number, which we would do at the hotel office, and

they would charge it to Judge Fitch and give us credit for it. He never gave any directions as to charging carriages to anybody else except himself. This carriage hire occurred the two first seasons; after that I don't think he had any carriages. The custom as to carriage hire—where the parties don't pay they have it charged
213 to their room, which we would do by going to the hotel office and telling them in the office to charge the room—or the man, where we know his name—which they would do. I have not, that I can remember of, seen Judge Fitch here on a week day during the last two seasons, except on a Sunday. I have seen Judge Fitch here on a Sunday this year. His business was with the pier here.

Q. Did Judge Fitch urge the construction and erection of that pier very earnestly, and did he lobby the Lelands and everybody else he could into it?

A. I think he did, as far as I know.

Q. Has that pier been of any benefit to the Ocean Hotel or to Warren Leland, Jr., as the proprietor of the Ocean Hotel, in your judgment?

A. I don't think it has been, in my judgment.

JAMES P. THOCKMORTON.

Sworn and subscribed — of July, A. D. 1886.

[L. S.] WM. C. CAMPBELL,
Notary Public, of New Jersey.

NATHAN RANDOLPH, a witness produced on the part of the defendant, being duly sworn, doth depose and say:

I am forty-seven years of age. I have been employed here in this hotel since 1873, except 1875 and 1876 and 1881, 1882, 1883, and 1884, when I was away. I have seen John Fitch here. He has been here so often that I looked on him as one of the family. He was here all the time in 1879 and 1880 while the hotel was open. I don't know
214 what rooms he occupied. I always thought his rooms was on the first floor, north of the office. I always looked after him in the dining-room, where I have charge, being head waiter ever since I have been here. He was no relation to the Lelands that I know of. He always walked in as if he was one of the family, and I took no more notice of him than of the family. He seldom ate with the family, mostly eating in the large room. When he came in with the family he would dine with them often. He generally ate in the main dining-room, as a guest of the hotel. I know he ate and lodged here in this hotel, but I do not remember the dates. I do not remember Mr. Ball. I mean by this hotel Leland's Ocean Hotel.

N. RANDOLPH.

Sworn and subscribed before me this 30th day of July, A. D. 1886.

[L. S.] WM. D. CAMPBELL,
A Notary Public of New Jersey.

JULIO HATCHWELL, a witness produced on the part of the defendant, being duly sworn, doth depose and say:

I am thirty-seven years of age. My place of business is in the Coleman House, New York. I have done business in the Ocean Hotel, at Long Branch, for the last seven years, during the season from the time the hotel opened until it closed. I have known Judge Fitch here at this hotel for the last seven years. He stopped here night and day. I thought once he was running the hotel. He had a room here in this hotel—on the main floor, north of the
215 office, I believe. He ate and lodged here. He had a good lay-out here for the Republican party at the time Garfield was nominated. I do not know whether he had a clerk with him or not. I do not know a man by the name of Ball. He was connected with the pier. He used to give me passes for the pier; said he was superintendent or president of the pier.

Q. Was the pier you speak of of any benefit to the hotel or not?

A. It was the worst thing for the Ocean Hotel that could have happened, in my judgment.

JULIO HATCHWELL.

Sworn and subscribed before me this 30th day of July, A. D. 1886.

[L. S.] WM. D. CAMPBELL,
A Notary Public of New Jersey.

HENRY PURDY called as a witness and not appearing, the telegram was offered from Purdy to Warren Leland and marked by — Exhibit I on the part of the defendant.

WARREN LELAND, Jr., being recalled in his own behalf, doth depose and further say:

By Mr. ALLEN:

Among the vouchers in this case sued on are two notes, one of $1,000 and one of $1,616 and some cents. The note of $1,000 antedates by six months the note of $1,616. There never existed any original note of $1,616. It was made up of a note
216 of $1,000 and a note of $577.43. They were combined and interest added, making a note of $1,616 and some cents. The note of $1,000 is the same amount as is embodied in the note of $1,616 and some cents. The note of $1,000 when renewed was not returned to me as it should have been, and John Fitch used this $1,000 note a long time afterwards as additional security at the Central National Bank, when they called upon him to furnish additional security; that note of $1,000 was paid by renewal and is a part of the $1,616 and some cents note. The original note of $1,000, marked A, is the note spoken of above, fell due on the seventeenth and twentieth day of April following, and was at that date renewed for three months, falling due the next time on the twentieth day of July following. Now, my note book ledger shows this original note and the renewals on the dates above given. (Defendants offer in evidence

extracts of page 116 of note book ledger, which I mark M. Counsel argue that copy made and certified by me shall be used in the place of the original.) On July 20th it was renewed for one month, falling due Aug. 20th, 23rd, 1880. This $1,000 just referred to, with its protest, I want to put in evidence. (Note and protest offered, marked M 1.) On August 19th of the same year a note for $577.43 fell due. These two notes were added together, making a note of $1,593.07, interest added, which, on the renewal being made, amounted to $1,616 and some cents, being the note in suit. (Note of $1,593.07 offered and marked M 2. Note of $571.72, dated March 13th, 1880, payable three months after date to order of John Fitch, made by
217 Warren Leland, Jr., offered and marked M 3.) This note is one of the original factors of this $1,616 note. I want to state in further explanation of this matter that two notes only existed outside of a note for $3,000—one note was $1,000 and one note was for $500, making a total amount of $4,500, which amount is now satisfied and paid; and the $1,000 note sued on, which John Fitch says he gave to the bank a long time after maturity as collateral to the $1,616 note, is simply a renewed paper which John Fitch failed to return to me, although it was paid at maturity and remained in his possession, and should have been delivered up to me. At that time my faith in John Fitch was unshaken, and it was his custom to return to me renewed paper at his own time and convenience. This note in question he forgot or neglected to give me, and at a later date, when he became financially embarrassed, found this voucher among his papers and handed it into the bank, when they pushed him, he owing the bank at that time between eight and nine thousand dollars. At that time there existed only two notes—the $3,000 note and the note for $1,616 and some cents, and no valid note for $1,000.

(Letter of John Fitch, dated March 8, 1881, to Warren Leland, Jr., offered in evidence and marked M 3.)

This letter is in John Fitch's handwriting, and which letter is as follows:

N. Y., *March 8th*, 1881.

Warren Leland, Jr.:

Enclosed is the $1,593.07 note. The other one, $3,000, is
218 in the Central N. Bank. I wish when you come to town you would go & get it. The cashier, Mr. Hamilton, will tell you all about how it is.

Yours, &c., JOHN FITCH.

I desire now to make a statement in reference to some property which John Fitch operated for me.

(Mr. Linn says he cannot see the materiality of this testimony, and does not wish to be considered as consenting to it.)

I simply wish to offer this testimony to show the absolute confidence that I had in John Fitch in the years 1879 and 1880, after the

organization of the pier company and after work had commenced on the pier. At the solicitation of John Fitch, who was at that time president of the pier company and exercised full control over the affairs of the pier company, I consented to give without consideration a strip of land fifty feet wide in front of the pier and running from Ocean avenue to the pier, said piece of land about fifty feet wide by about seventy-five feet deep, to pier company. John Fitch, being a lawyer, attended to the legal business of the company, drew up a deed from me to the pier company, which I executed on April 21st, 1879, and recorded in the clerk's office of Monmouth county on the twenty-ninth day of April, 1879, in Book 314 of Deeds, page 158. After the execution of this deed I discovered that the boundaries of that deed covered six hundred feet of Ocean front instead of fifty feet, and conveyed without consideration to the
219 pier company. Although I read the deed at the time, I did not read the boundary lines close enough to discover that the deed covered this entire property. I did not have the services of any lawyer, and entrusted entirely to John Fitch. I signed the deed supposing it covered only fifty feet. Fitch had the deed prepared.

(Abstract copy of the deed offered and marked Exhibit M 4 on part of defendant.)

It was months before I discovered that the mistake had been made. In searching the title for other purposes I discovered that the error had been made.

I saw Judge Fitch at once about this matter. He said he could do nothing about it until the directors met. The directors met and adjourned. It was a long time afterwards before I could get any of them together. Fitch showed no disposition to have it corrected and did not take the active part in having it corrected which he should have done. One year after this transfer was made, on April 21st, 1880, the Long Branch Ocean Pier Company deeded back to me—corrected the mistake in the deed to them—the proper portion of the land not intended to be conveyed to them. This deed — recorded on April 27th, 1880, in Book 326 of Deeds, page 63.

(Deed offered and marked Exhibit M 5 on part of the defendant.)

Cross-examined by Mr. LINN:

The handwriting of ledger note book is in handwriting of Mr. Wickam and also in handwriting of Warren Leland, Sr., on bottom of page, page referred — being page 116.
220 WARREN LELAND, JR.

Sworn and subscribed before me this 13th day of August, A. D. 1886.

[L. S.] WM. D. CAMPBELL,
A Notary Public of said State.

SEPTEMBER 10, 1886.

Parties met, by their solicitors, pursuant to adjournment.
Present: Mr. Linn, sol'r; Mr. Allen, sol'r.

Examination of WARREN LELAND, Jr., resumed on rebuttal:

Witness Warren Leland, Jr., says he knew Mr. Ball, witness sworn in this cause. Mr. Ball took his room in my hotel to the account of John Fitch as Mr. Fitch's clerk, and the indebtedness contracted by him was charged to Mr. Fitch. That charge appears in my books, which I have made exhibits in this cause.

John Fitch testifies that Charles Leland, now deceased, made some arrangements with him about his board, and I wish to testify that Charles Leland continuously importuned me to charge up and collect of Fitch his accounts, and spoke to me of it very frequently, as he also did to Mr. Harry Purdy, the cashier of my hotel. On many occasions when Charles Leland saw orders going to Fitch's room, which he frequently did from the bar and elsewhere, he came direct to the office and asked me if the memorandum of the charge was made in the office on his accounts. I told him yes; it
221 was charged, and Fitch was good for the bill and would be paid.

Q. Did you at any time authorize or consent for Charles Leland to allow Mr. Fitch or Mr. Ball to have lodging or board or supplies at your hotel without Fitch being liable to satisfy you therefor?

A. No, sir; Mr. Ball sent me a letter suggesting that I furnish him money, for which he would, as I understood he would be absent, go away to Massachusetts, so as Mr. Fitch could not have him as a witness. The amount asked was ten dollars. I did not answer the letter, but handed it over to Mr. Allen. I did not send him the money or any part of it. That letter was after this, not before.

This testimony is taken subject to any objections to its relevancy on the hearing of the causes.

The letter is offered in evidence. Mr. Fitch had told me Mr. Ball, his clerk, would be down here—coming to Long Branch—and to reserve him a room convenient to his room, and I did so; and it appears, as to the time and amount, in Mr. Fitch's accounts.

The pier stock is valuable, and the pier Co., by its treasurer, Mr. Held, informed me lately that the Co. had about $9,000 surplus on hand at present.

WARREN LELAND, JR.

Sworn and subscribed before me this 10th day of September, A D. 1886.

[L. S.] WM. D. CAMPBELL,
A Notary Public in the Aforesaid State.

222 WARREN LELAND, SR., resumed, on his oath says:

Q. What arrangement, if any, existed between you and John Fitch relative to the settlement of your accounts against him transferred to Warren Leland, Jr.?

A. When I opened the Leland Hotel, in New York, October 1, 1882, John Fitch was occupying a room in that hotel and continued to occupy it whilst I kept that hotel to the middle of December, 1883. He paid some money on account, but there was a balance of between $300 and $400 accumulated against him, which he owed. I pressed him for the money, and he promised to raise the money for me if he could, and if he could not he wished me to transfer it to Warren Leland, Jr., with whom he had some business transactions. He did not raise the money, and I transferred the accounts to Warren Leland, Jr., as desired by him. That is the same account which has been made an exhibit in these causes. I informed him it was so transferred. That account has never been paid to me. The account was for board and room and supplies at the hotel called Leland Hotel, now known as the Coleman House, New York city. I never invited John Fitch to come to Warren Leland Jr.'s hotel at Long Branch to stay as a guest at any time without pay or recompense by him to Warren Leland, Jr., and I never knew any — that did so invite him or Mr. Ball.

WARREN LELAND.

Sworn and subscribed before me this 10th day of September, A. D. 1886.

223 [L. S.] WM. D. CAMPBELL,
A Notary Public in and for said County & State.

(Endorsed:) U. S. court, N. Jersey district. The Central Bank, compl't, &c., and Lelands. Depositions. Filed Sept. 28, 1886. S. D. Oliphant, clerk.

224 UNITED STATES OF AMERICA, } ss:
District of New Jersey, }

I certify the foregoing to be a true and faithful copy of the record and proceedings of the circuit court of the United States in and for the district of New Jersey, in the third circuit, in a certain suit at law therein lately pending between The Central National Bank of the City of New York, plaintiff, and Warren Leland, Jr., defendant.

In testimony whereof I hereto subscribe my name and affix the seal of the said circuit court, at Trenton, in said district, this seventh day of October, A. D. 1887, and in the one hundred and twelfth year of the Independence of the United States.

[The Seal of the U. S. Circuit Court, Dist. of New Jersey.]

S. D. OLIPHANT, *Clerk.*

225 WARREN LELAND, Jr., Pl'ff in Error,
vs.
THE CENTRAL NATIONAL BANK OF THE CITY OF NEW YORK,
Defendant in Error.

On writ of error from circuit court of the district of New Jersey.

Afterwards come the said Warren Leland, Jr., and says that in

the record and proceedings aforesaid there is manifest error in the proceedings of the honorable court and in the judgment in said cause—

For that a one-thousand-dollar note, which forms a part of the judgement, was satisfied in full before the commencement of the suit by being embodied in the amount of another note of $1,616.80 *dollars*, which also forms part of the judgement.

Also that the plaintiff in error was not allowed all the credits & payments which had been made on said notes or claim before the commencement of the suit.

And for that whereas John Fitch, the original payee & holder of the notes in question, had rec'd full payment or satisfaction of all said notes and claim from the plaintiff in error by & with the knowledge & consent of the defendants in error before the commencement of the said suit, & that whereas the aforesaid judgment is erroneous & contrary to the weight of evidence in the cause.

226 And the said Warren Leland, Jr., prays that the judgment aforesaid may (be) reversed, annulled, and altogether held for nought, and that he may be restored to all things which he hath lost by occasion of the said judgment.

WARREN LELAND, JR., *pro se.*

227 [Endorsed:] United States Supreme Court. Warren Leland, Jr., plaintiff in error, against The Central National Bank of the City of New York, body corporate, defendant in error. On writ of error to the U. S. circuit court of the district of New Jersey. Assignment of errors. Warren Leland, Jr., *pro se.*

Endorsed on cover: New Jersey C. C. U. S. No. 881. Warren Leland, Jr., plaintiff in error, *vs.* The Central National Bank of the City of New York. Filed October 19, 1887.

Office Supreme Court U. S.
FILED,
FEB 21 1889
JAMES H. McKENNEY,
CLERK.

United States Supreme Court.

WARREN LELAND, JR., *Plaintiff in Error,* *vs.* THE CENTRAL NATIONAL BANK OF THE CITY OF NEW YORK, *Defendant in Error.*	**Action at Law in Case.**
WARREN LELAND, JR., *Appellant,* *and* THE CENTRAL NATIONAL BANK OF THE CITY OF NEW YORK *Respondent.*	**In Equity on Foreclosure of Mortgage.**

APPELLANT'S BRIEF.

ROBERT ALLEN, JR.,
Solicitor for Appellant.

United States Supreme Court.

WARREN LELAND, JR., *Plaintiff in Error,* *vs.* THE CENTRAL NATIONAL BANK OF THE CITY OF NEW YORK, *Defendant in Error.*	**Action at Law in Case.**

WARREN LELAND, JR., *Appellant,* *and* THE CENTRAL NATIONAL BANK OF THE CITY OF NEW YORK, *Respondent.*	**In Equity on Foreclosure of Mortgage.**

The suit in law court was originally brought by the Bank as plaintiff in the New Jersey court

against Warren Leland, Jr., defendant. The suit is based on three promissory notes alleged by the plaintiff to have been given by Leland, payable to the order of John Fitch, and alleged by the bank to have been holden by the bank.

1. Note, January 14, 1880, at 3 months, for $1,000.00.

2. Note, March 5, 1884, at 3 months for $1,616.97.

And by amendment to declaration, after pleas and notice of set-off filed, added,

3. The note, October 27, 1881, for $3,000.00.

The suit in equity was originally instituted in the Court of Chancery of New Jersey by the Bank, complainant (appellee), against Warren Leland, Jr., appellant. The complainant filed bill of complaint to foreclose mortgage alleged to have been given by Warren Leland, Jr., to John Fitch, October 19, 1880, for $4,500 on lands of Leland at Long Branch, New Jersey, and alleged to have been assigned by Fitch to the Bank, March 13, 1882.

Leland, defendant, filed his answer in chancery, sets up in his defence in substance: That Fitch was for several years intimate with Leland and family at Long Branch and in New York City; that Fitch represented himself to be a person of large means; that he, Fitch, was anxious to hold a large amount of pier stock of the Long Branch Iron Pier company, and to control the same; that he had a box wherein he kept his papers in the bank; that Leland let Fitch have vouchers representing pier stock of several thousand dollars, also notes; and at Fitch's suggestion the bond and mortgage in question; Fitch represented that he wished to put the same in his box in the bank, but Fitch to have control of them and the same not to be transferred away; that Fitch disposed of and converted the pier stock

to his own use, without the consent or knowledge of Leland, to the bank; that the notes were all satisfied, and that the mortgage was satisfied in full, although Fitch had possession of them; and that Fitch became indebted to said Leland to a large amount, which he yet owes Leland; that satisfaction and payment of the notes in question was payment and satisfaction in full of the mortgage in question; and payment of the mortgage was and is payment and discharge of all the notes in question in the suit in the court of law; that the Bank had at all all times full knowledge of the premises and arrangements of Fitch and Leland; that Fitch was intimate with the Bank and a confidential of the Bank; that the Bank afterwards permitted Fitch to become largely indebted to the Bank to the amount of several thousand dollars; that the Bank resorted to procuring possession and control of the notes and vouchers in fraud of said Leland's rights and property; that the Bank allowed and permitted the indebtedness of Fitch to the Bank to accrue and exist independent of the notes, and without having either of the notes in view between them as a basis of credit at the time that any of Fitch's indebtedness to the Bank accrued; and the indebtedness continuing, the Bank resorted in its influence over Fitch to procuring control of the notes and vouchers in the absence of and without the authority of Leland; that the conduct of said Bank and Fitch together was fraudulent in the premises; and the alleged transfer and conversion of the pier stock, notes, and bond and mortgage, was a fraud on Leland; and the Bank was and is estopped from enforcing collection of the notes and bond and mortgage in question against Warren Leland, Jr.

In the suit in the court of law the defendant filed special plea of payment in full of all the notes in question and also claimed in his pleadings that sat-

isfaction in full of the mortgage in question had been made to the holder of the mortgage.

IN UNITED STATES CIRCUIT COURT FOR DISTRICT OF NEW JERSEY.

The two suits removed from State Courts.

THE CENTRAL NATIONAL BANK OF THE CITY OF NEW YORK, *vs.* WARREN LELAND, JR.	**On Contract.**

THE CENTRAL NATIONAL BANK OF THE CITY OF NEW YORK *Complainant,* *vs.* WARREN LELAND, JR., *Defendant.*	**In Equity.**

It is hereby stipulated and agreed that the above stated suits shall be heard together as one suit, before the Court without a jury, and shall be tried and heard upon the evidence already taken by the parties, and that which may be taken before the hearing, and such testimony so far as the same may be legal and competent may be read upon such hearing and applied to either case so far as the same may be applicable without producing the witnesses before the court, and each party may object to the

legality or competency or relevancy of any of said testimony whether such objections were made at the time of taking such testimony or not.

JOHN LINN,
Attorney and Solicitor of Pltffs. and Compl'ts.

R. ALLEN, JR.,
Attorney and Solicitor of Defendant.

Witness, WARREN LELAND, JR.
March 17, 1886.

A bill of exceptions is unknown to chancery practice.

12 Peters, 339, 9–1108.
Opinion delivered by Chief Justice Taney.

See Weems vs. George. 13 Howard, page 190, 14–108.

All the evidence in both of the present cases was taken in accordance with the stipulation and agreement of the parties before a notary public and reduced to writing. and objections made and noted and entered before a notary, and filed with the clerk of the court, and both suits heard and argued together before the circuit judge, on the evidence so taken and filed in accordance with stipulation on file, and embodied, incorporated in record with the cases on file.

The object of the bill of exceptions is to make matter of record what would not otherwise appear as such and that no bill is necessary where the error alleged is apparent upon the record.

Suydam vs. Williamson. 20 Howard, 427, (65, U. S. XVI 978).

J. R. Young, et. al., Pltffs. in error, vs. William Martin. Page 354, 358, 8 Wallace, December term, 1868.

No bill of exceptions is necessary where the error alleged is apparent upon the record. Act of congress, 3 March, 1865.

Section 700 does not forbid the review of these cases as stated in the appellee's brief.

The question involved in the suits does not depend wholly upon the law of any particular state relative to set-offs.

The law cited by appellee's counsel in his brief, 2 Daniels, 442, 443, sections 1435, 1436, 1437, does not in any wise apply to the present Leland cases. According to the pleadings and evidence displayed on the record, neither is the principle referred to in 2 Randolph, C paper, page 319, applicable to this case.

Defendant plead general issue and plea of payment, and notice of set-off pursuant to the statute. The defendant caused the suits to be moved from the State Court into the United States Court.

Minor vs. Tillotson. 1 Howard, 135.

Mr. Webster *moved for defendant to dismiss writ of error* for reasons.

1. Because this court has no jurisdiction on writs of error of any question apparent in the record.

2. Because the record does not show any question of law to have been decided in the court below which this court can revise.

3. Because there is no question of law stated on the record by bill of exceptions nor any special verdict or agreed state of facts or any unquestioned evidence of facts on which any question of law can arise.

4. Because it does not appear whether any, or if any, what matter of law was in dispute between the parties.

Mr. Walker opposed the motion.

Chief Justice Taney delivered the opinion of the Court.

"Assuming the statement was correct it does not follow that advantage can be taken of it upon a motion to dismiss.

"The plaintiffs allege that there is error in law in the judgment and have brought it here for the revision of this court, and *upon the argument* of the case it will be encumbent on them to show the record presents in some form or other a statement of facts upon a question of law arose in the circuit court and which was there erroneously decided; and if he fails to do this the judgment must be affirmed. But he is entitled to be heard in order that he may show if he can that the error of which he complains appears on the record, and whether it does so appear or not is a matter which can not be inquired into in the form in which the case is now brought before us."

The rule in case of Francis Hinckley vs. Levi P. Morton, 13 Otto, 764, 766, does not apply in these Leland cases.

Amory vs. Amory, October term, 1874, U. S. Reports, 91–357, 23–436.

Chief Justice Waite, by the court:

The motion to dismiss and advance is denied. We cannot dismiss a case on motion simply because we may be of opinion that it has been brought here for delay only. Both parties have a right to be heard on the merits, and one party cannot require the other to come to a hearing upon a mere

motion to dismiss. To dismiss under such circumstances would be to decide that the case had no merits.

In the case of Henry S. Gilson vs. Town of Dayton, March 7, 1887, March 14, 1887, on motion to dismiss or affirm submitted, the motions were denied.

Chief Justice Waite, by the court:

The questions involved in the merits are not such as ought to be disposed of on a motion to affirm.

In the case of Burlington, Cedar Rapids and N. R. R. Co. vs. C. L. Dun, December 20, 1886, January 20, 1887, motions to dismiss and affirm submitted.

Chief Justice Waite:

Each of these motions is denied. The question is of too much importance to be decided on a motion to affirm.

Crane Iron Co. vs. Amos Hoglan and als; C. Shatwurts vs. same; Nos. 818, 819.

Motion to dismiss writ of error to affirm decision below, to strike out assignment of errors and to advance the causes, are denied. October 23, 1882.

By the court:

The questions involved are not of a character that we are inclined to consider on a motion to affirm.

108 U. S. Reports, page 5.

In the case of Prentice vs. Stearns, October term, 1884, 113, U. S. 1062, No. 1157.

Opinion of court by Mr. J. Matthews:

"The plaintiff in error has assigned errors in several particulars in the finding of facts, but as there is no bill of exceptions setting forth the evidence, no error in law can be

> assigned in respect to any finding of the facts, and we are necessarily restricted to the question whether upon the facts as found *there was error in giving judgment* for the defendants."

In the case of Whitney vs. Cook, in October term, 1878, 99 U. S. 607, this Court decided that the motion to affirm could not be entertained unless there appeared on the record *at least some color of right to a dismissal.* This practice has been steadily adhered to ever since.

The $1,000 old note was brought to the bank by Fitch.

> Page 18, of the evidence.

Ergo, that $1,000 note was past due when the bank got it of Fitch. It was past due when plaintiff got it.

> Page 22 and 24 of plaintiff's evidence.

Fitch at that time owed the bank $9,000.

> Page 25 of plaintiff's evidence.

One who takes a note after due takes it subject to all defences existing against it in the hands of the holder when due, or at any time.

> Williams vs. Matthews. 3 Cowen, 252.
> Janes vs. Caswell. 3 Johnson, chancery 29.
> Lansing vs. Lansing. 8 Johnson, 454.

The purchaser of a note which is due takes it subject to all equities or legal or equitable defences which existed against it in the hands of the person from whom he received it.

> DeMott vs. Starke. 3 Barbour, chy. 403.
> Reed vs. Warner. 5 Paige, 650.

Receiving a note for a precedent debt is not receiving it for value, within mercantile usage, so as to protect the holder against a prior equity.

Bank of St. Albans vs. Gillilard. 23 Wendell, 311.
Small vs. Smith. 1 Denio, 583.

Crediting the note upon account, or balancing the account on the books and giving a receipt, is not parting with value.

Stewart vs. Small. 2 Barbour, 559.
Speer vs. Myers. 6 Barbour, 445.

When a note is satisfied and the payee *fraudulently* transfers it to the plaintiff, who receives it in good faith and before maturity but for a *precedent* debt, the plaintiff cannot recover.

Rosa vs. Brotherson. 10 Wendell, 86.
Smith vs. VanLoew. 16 Wendell, 659.

Receiving the paper merely as security for an *antecedent* debt is not parting with value in the commercial sense of the term.

Stalker vs. McDonald. 6 Hill, 93.
Furman vs. Gilchrist. 1 Sand, 53.
Hart vs. Palmer. 12 Wendell, 523.
Company vs. Reynolds. 2 Hill, 140.

The holder of a promissory note which has come to his hands after maturity holds it subject to every equity which the drawer or endorser had against the holder of the note when it came due.

Little vs. Cooper, N. J. 3 Stockton, 224.

An endorsee of a note endorsed after it has come to maturity takes it subject to all equities that exist between the original parties, and liable to every legal defence which the defendant might set up in

an action against him by the payee of the note or bill, or by any holder thereof in whose hands they were at any time after maturity.

Cumberland Bank vs. Hand. 3 Harrison, New Jersey Supreme Court, page 222.

On the foreclosure of a mortgage by the assignee a debt due from the mortgagee to the mortgagor before the assignment may be set off against the mortgage debt.

Roosevelt vs. Bank of Niagara. Hopkins, 579, 580. Affirmed, 9 Cowen, 409.

New Jersey Supreme Court decision. Cumberland Bank vs. Hann, May term, 1841. 3 Harrison, 222.

The Court says on page 226:

"The plaintiffs, by taking the notes after maturity, took them subject to this very *defence* so far as it extends, not it will be perceived by way of *set off* under the statute, but as evidence of *payment* or accord and *satisfaction* before the notes came to the hands of the plaintiff."

On page 227 the Court says:

"Such an endorsement is implied notice to the endorsee of all *equities* subsisting between the original parties and of every legal *defence* to which the note was subject in the hands of the payee."

In case of Hume Webster vs. Howe Machine Co., in Supreme Court Errors, Connecticut, New England Reporter, No. 3, page 568, February, 1887.

The Court held:

1st. In an action at law for the enforcement of a contract the law of the jurisdiction in which it is made and to be executed determines the extent of the obligation of the

contractor and the character of the defences which he may interpose.

2d. When a bill of exchange was drawn in London on defendant in New York city, where it had its office and place of business, and where the bill was accepted and payable in an action on the acceptance, held that it was a New York contract and governed by the laws of that state. That the burden is on the person suing on it to prove that he is a bona fide holder and that he cannot be such if he received it on a pre-existing debt without parting with any right or property of value, in which case the holder can have no other or greater rights than the drawer had.

"It is the pleasure of the law, if possible, to make every fraud harmless to innocent parties.

Cites and canvasses in report of the decision.

Case of Coddington vs. Buy, A. D., 1822, 20 Johnson, 637.

New York Exchange Co. vs. DeWolf. 3 Bosw., 86.

Comstock vs. Hier. 73 N. Y., 269, (1878).

Woodhull vs. Holmes. 10 Johnson, 231.

Stalker vs. McDonald. 6 Hill, 93.

Weaver vs. Burden. 49 N. Y., 267.

Turner vs. Treadway. 53 N. Y., 650.

The general principle of law stated in the case of Swift vs. Tyson, 16 Peters, 1.

"That it makes no difference whatsoever as to the rights of the holder whether the debt for which the negotiable instrument is transferred to him is a pre-existing debt or is contracted at the time of the transfer."

Page 20 is not applicable as the law that should govern the present case.

It does not appear that the general principle or rule of law promulgated on page 22 of the case of Swift vs. Tyson, where the court says: "Be this as it may we entertain no doubt that a bona fide holder for a pre-existing debt of a negotiable instrument is not affected by any equities between the antecedent parties where he has received the same *before it became due without notice of any such equities*," should be *all* practically applied to the present case. The Swift-Tyson is not in any wise a case similar to these Leland cases by the records.

The record shows on page 17, line 1 to 10, that the Bank had in 1882 notice of Fitch's indebtedness to Defendant Leland.

That the Bank would not at any time discount for Leland.

Page 20, line 20 to 30, of the evidence.

The Bank objected to the discounting of Leland's notes from the beginning.

The endorser Fitch's name had *been erased* from the $1,000 note, and from the other notes, when handed to the bank.

Page 24, line 38 to 40, of the evidence.

John Fitch, the payee, owed the Bank $9,000.

Page 25, line 43 to 45, of the evidence.

John Fitch, the witness produced by the plaintiff —the Bank—says in his evidence on record, page 43:

The witness. Before I handed in the $1,000 note, "I had had this in my pocket all the time."

Q. Looking at each one of the four notes you have referred to in your evidence, can you explain how

you got your signature stricken off from all of them?

A. I struck them off myself.

Q. Of all those four notes?

A. Yes, sir.

Q. At the same time, or at different times?

A. At different times.

Q. How could you get those notes to strike your signatures off of all them if those notes were not paid?

A. I struck them off in the bank.

And on page 21 of the evidence Mr. Wheelock, director, and for 15 years president of the bank, says:

Q. In New York or New Jersey at that time?

A. There are so many Lelands, when I came into this room, unless Mr. Leland had spoken to me, I should not have known that it was Warren Leland, Jr. You can see how little I have known of him. Personally I have great regard for Mr. Leland, but business is business and there has been no time when I should have taken Mr. Leland's paper, or the bank either.

Again, on page 33 of the evidence, Fitch, witness for the Bank, says, in answer:

Q. Did you ever ask Warren Leland, Jr., to give you any bonds, or any securities to deposit in the Central National Bank (Pltff.), simply for the purpose of giving you more strength with that bank?

A. No, sir—Good God—I was worth over $250,000.

And on page 45 of the evidence, he says: "President Wheelock had my paper discounted without going before the full board, as I was *then* perfectly good."

And on page 46, he says:

Q. Why were you in such a hurry at that time to make the assignment?

A. I was failing in business and secured everything I could. I had collaterals up all around in various places. The blood was taken out of me—ten and fifteen thousand dollars a day.

Q. They were combined together you mean?

A. That is my memory.

And on page 43 of the evidence, the same witness, Fitch, says:

Q. Do you mean to say that you simply put the bond and mortgage in the bank first, and afterwards transferred it?

A. Afterwards filed the assignment on it. I went and handed it in the bank with the other papers.

Q. When you say you handed the bond and mortgage in the bank with the other papers, what other papers do you refer to?

A. The papers that they had. *The notes* and receipts were there.

And again, on page 55, Fitch says:

Q. On February 10, 1880, or February 13, 1880, when that note became due, did you owe the bank anything?

A. I was borrowing heavily from the bank on collateral security of my own *outside and independent of these* matters entirely, and dealing in stocks. How, when or where, I have no remembrance.

And on page 42 of the evidence, the same witness for the Bank says:

Q. March 5, 1881, is the note you refer to?

A. My remembrance is this. That up to the time the mortgage was given that was the amount due me, and if anything was had after that amount it was over and above the amount in the mortgage. As near as I can remember, the $4,500, at the time

the mortgage was given, was: The $46.50, dated November 10, 1880; the $1,000, January 14, 1880; the $3,000, October 27, 1881; and now he owed me—I discounted his note for $500, and then came the other matter and that was put in with the $500 note.

The authority or principle quoted in the brief of the counsel for the Bank refering to 1 Daniel on negotiable instruments, Par. 847, refers to and is qualified by paragraph or section 895 of same.

1 Daniel.

The pleadings and evidence now on record in both of these cases of the Bank against Leland, appellant and plaintiff in error, display the conduct and acts of the Bank of such a fraudulent nature in connection with Fitch and in the absence of and without the authority, express or implied, of said Leland in the premises, as to invoke the construction of the law therein by the appellate court to have the notes and mortgage declared satisfied and invalid as between the Bank and said Leland; and repel the insinuation in the appellee's brief that either the writ of error or the appeal was in anywise taken for the purpose of delay only, and respectfully submit that there was error in law in giving judgment in favor of the plaintiff below and and in giving decree for complainant below.

S. L. HILLIER,

Counsel for Appellant and for Plaintiff in Error.

FILED
MAR 25 1891
JAMES H. McKENNEY,
CLERK

JERSEY CITY PRINTING COMPANY'S "RAPID" PRINT, 37 MONTGOMERY STREET, JERSEY CITY.

United States Supreme Court.

OCTOBER TERM, 1890.

WARREN LELAND, Jr., Plff. in Error, vs. THE CENTRAL NATIONAL BANK OF THE CITY OF NEW YORK.	Action at Law. No. 260. In Case.
WARREN LELAND, Jr., Appellant, and THE CENTRAL NATIONAL BANK OF THE CITY OF NEW YORK.	Suit for Foreclosure. No. 261. In Equity.

BRIEF OF JOHN LINN,

Counsel of Defendant in Error, and of Respondent on Appeal.

United States Supreme Court.

WARREN LELAND, Jr., Plff. in Error, vs. THE CENTRAL NATIONAL BANK OF THE CITY OF NEW YORK.	Action at Law. In Case.
WARREN LELAND, Jr., Appellant, and THE CENTRAL NATIONAL BANK OF THE CITY OF NEW YORK.	Suit for Foreclosure. In Equity.

These suits were commenced originally by the Central National Bank against Warren Leland, Jr., in the State Courts of the State of New Jersey. The action at law was commenced in the Supreme Court and the suit in equity in the Court of Chancery of that State. After the pleadings had been filed they were removed by the defendant Leland into the Circuit Court of the United States for the District of New Jersey.

The action at law was founded upon three promissory notes made by Leland, and the suit in equity was for the foreclosure of a mortgage intended as security, so far as it would extend, for the payment of these notes.

Embracing therefore, substantially the same subject matter, by stipulation of counsel, the testimony was all taken before a notary public, and so far as that was concerned they were treated as one suit, and the evidence was to be used in either or both cases as the parties might desire. After the evidence was all in, the parties stipulated that both cases should be heard together on such testimony, before the Court without a jury. This stipulation was according to section 649 of the Revised Statutes of the United States.

The following is a Copy of the Stipulation.

UNITED STATES CIRCUIT COURT.

DISTRICT OF NEW JERSEY.

THE CENTRAL NATIONAL BANK OF THE CITY OF NEW YORK,
vs.
WARREN LELAND, Jr.
— On Contract.

THE CENTRAL NATIONAL BANK OF THE CITY OF NEW YORK,
Complt,
vs.
WARREN LELAND, Jr.
Deft.
— In Equity.

It is hereby stipulated and agreed that the above stated suits shall be heard together as one suit, before the Court without a jury, and shall be tried and heard upon the evidence already taken by the parties, and that which may be taken before the hearing, and such testimony, so far as the same may be legal and competent, may be read upon such hearing and applied to either case so far as the same may be applicable, without producing the witnesses before the Court, and each party may object to the legality or competency or revelancy of any of said testimony, whether such objections were made at the time of taking such testimony or not.

JOHN LINN,
Atty. and Solr. of Plffs. and Complts.

March 17, 1886.
R. ALLEN, JR.,
Witness—Warren Leland, Jr.
Atty. and Solr. of Deft.

See page 14 of the Record.

The cases were so heard and determined.

On the hearing the testimony was all read. No objection was made before the Court to any part of it, no ruling made by the Court, and of course no exceptions taken.

There is no bill of exceptions filed or brought up with the writ of error in the action at law.

The Circuit Court upon the trial found for the plaintiff, the Bank, in the action at law, and ordered judgment for seven thousand and twenty-nine dollars and fifty-two cents ($7,029.52).

The finding of the Court was general, not special.

The following are Copies of the Findings in each Case:

CIRCUIT COURT,
DIST. OF NEW JERSEY.

THE CENTRAL NATIONAL BANK OF THE CITY OF NEW YORK,
vs.
WARREN LELAND, Jr.
} Action at Law.

Before McKENNAN, Circuit Judge, and WALES, J.

Per CURIAM.—The parties having, by written stipulation, waived a jury, and the cause having been heard by the Court upon the evidence submitted on both sides, and the argument of the respective counsel of the parties, the Court find in favor of the plaintiff and against the defendant, in the sum of seven thousand and twenty-nine dollars fifty-two cents ($7,029.52) and order judgment to be entered accordingly.

Oct. 11, 1886.

CIRCUIT COURT.
DIST. OF NEW JERSEY.

THE CENTRAL NATIONAL BANK OF THE CITY OF NEW YORK,
vs.
WARREN LELAND, Jr. and others.
} In Equity.

Per CURIAM.—This cause was heard on bill, answer and proofs, in connection with an action at law in which the Central National Bank of N. Y. is plaintiff, and Warren Leland, Jr., is defendant, it is now adjudged and decreed that the complainant is entitled to a decree as prayed for, the payment thereof to be credited on the judgment in the action at law aforesaid, and the payment of said judgment to

operate as a satisfaction of said decree, and upon the full payment thereof the respondent to be entitled to a re-transfer of forty-five shares of Long Branch Ocean Pier Company stock. And counsel will prepare a decree accordingly.

Oct. 11, 1886.

See finding of Court, page 15 of the Record.

Although there is no bill of exceptions, there has been filed in this Court an assignment of errors which relate entirely to errors in the finding of the facts. The assignment of errors is as follows:

"Afterwards comes the said Warren Leland, Jr., and says, that in the record and proceedings aforesaid there is manifest error in the proceedings of the Honorable Court and in the judgment in said cause.

For that a one thousand dollar note which forms a part of the judgment was satisfied in full before the commencement of the suit, by being embodied in the amount of another note of $1,616.80-100, which also forms part of the judgment.

Also that the plaintiff in error is not allowed all the credits and payments which had been made on said notes or claim before the commencement of the suit.

And for that John Fitch, the original payee and holder of the notes in question, had received full payment or satisfaction of all said notes and claims from the plaintiff in error by or with the knowledge and consent of the defendants in error before the commencement of the said suit, and that whereas the aforesaid judgment is erroneous and contrary to the weight of evidence in the cause.

And the said Warren Leland, Jr., prays that the judgment aforesaid may be reversed, annulled and altogether held for nought, and that he may be restored to all things which he hath lost by occasion of the said judgment.

WARREN LELAND, Jr.,
Pro se."

Such then being the condition of this case, no ruling of the Court in the progress of the trial of the cause having been excepted to at the time, no bill of exceptions having been prepared or presented to the Court, none having been sent up with the record here, and the assignment of errors being only upon the findings of fact, there is ab-

solutely nothing here, in the action at law, for this Court to act upon, nothing to which its jurisdiction can attach. This matter is regulated by section 700 of the Revised Statutes. That section expressly provides that, "when an issue of fact in any civil cause in a circuit court is tried and determined by the Court without the intervention of a jury, according to section six hundred and forty-nine, the rulings of the Court in the progress of the trial of the cause, if excepted to at the time, and duly presented by a bill of exceptions, may be reviewed by the Supreme Court upon a writ of error or upon appeal; and when the finding is special the review may extend to the determination of the sufficiency of the facts found to support the judgment.

This Court has accordingly held in *Stanley* v. *Supervisors of Albany*, 121 *U. S. Reports*, page 547, that "Where a case is tried by the Court without a jury, its findings upon questions of fact are conclusive here; it matters not how convincing the argument that upon the evidence the findings should have been different." * * * "Only rulings upon matters of law, when properly presented in a bill of exceptions, can be considered here, in addition to the question when the findings are special, whether the facts found are sufficient to sustain the judgment rendered. This limitation upon our revisory power on a writ of error in such cases is by express statutory enactment." See also *Lloyd* v. *Mc William*, 137 U. S., 576.

With these facts and this law staring us in the face, is it not perfectly manifest that there is nothing here upon which this Court can act, and that this writ of error has been taken solely for the purpose of vexation and delay?

It seems there can be no other course to pursue but to dismiss this writ of error, or to affirm the judgment.

But if there is any ground on which the jurisdiction of the Court can be maintained, it is nevertheless clear for other reasons that there is nothing in this case to sustain either this writ of error or this appeal. A very slight examination of the questions arising upon the

evidence in these suits and the law applicable thereto, will demonstrate this to be the case.

This action at law was brought to recover the amount of three promissory notes made by Leland to the order of John Fitch, and the suit in equity which was heard at the same time, was to foreclose a mortgage given by Leland to Fitch as collateral security for a part of these notes.

As before stated, the Circuit Court upon the trial found for the plaintiff, the Bank, in the action at law, and ordered judgment for seven thousand and twenty-nine dollars and fifty-two cents ($7,029.52).

In the suit in equity the Court decreed that the mortgaged premises be sold to raise and pay to the Bank $6,114, besides costs, the amount so raised to be credited on the judgment in the action at law, and the payment of the judgment to operate as a satisfaction of the decree, and upon the full payment thereof Leland to be entitled to a re-transfer of forty-five shares of Long Branch Ocean Pier Company Stock.

The following is a copy of each of the notes sued upon:

$1000.00-100. NEW YORK, January 14th, 1880.

Three months after date I pro nise to pay to the order of John Fitch one thousand dollars at The Central National Bank. Value received.

WARREN LELAND, Jr.

Endorsed—Pay the Central National Bank,
JOHN FITCH, 261 Broadway.

$1616.97-100. March 5th, 1881.

Three months after date I promise to pay to the order of John Fitch sixteen hundred and sixteen dollars and 97-100, at the Central National Bank, New York. Value received.

WARREN LELAND, Jr.

Endorsed—Sept., two hundred dollars paid on this note.
JOHN FITCH, 261 Broadway.

July 14th, 1884. Received thirty dollars on the within note.
JOHN FITCH.

Pay the Central National Bank,
JOHN FITCH, 261 Broadway.

$3000. LONG BRANCH, October 27th, 1881.

Three months after date I promise to pay to the order of John Fitch three thousand dollars at The Central National Bank, New York. Value received.

WARREN LELAND, Jr.

Endorsed—Pay the Central National Bank,
JOHN FITCH, 261 Broadway.

Protest fees, $1.31-100.

The first two of these notes was transferred to the Bank for money loaned to Fitch, after their maturity. The third note was discounted by the Bank for Fitch, before maturity. Pages 17, 18, 23.

There was no dispute as to the giving of these notes by Leland, or that the mortgage was given as collateral.

The defence set up by Leland against their payment was that John Fitch was largely indebted to him, in an account equal to, or greater than, the amount of the notes, and this he sought to set off against them in these suits. Most of the evidence taken in the suits related to this claim of Leland, either in support or denial of the same. It is this which makes the case so unnecessarily voluminous.

The question before the Court on the trial and hearing of these cases was whether, even if the Court had found that Leland's claim against Fitch was valid, and sustained by the proofs (which they did not find), he was entitled in law to off-set it against these notes in the hands of the Bank.

It was insisted by the counsel of the Bank that it could not be done. If it could not, then the right of the Bank to recover was clear and unquestionable, whatever might be the result of the controversy between Leland and Fitch.

This is the only question which could be submitted to this Court, if the case were properly here for consideration, and I deem it so well settled and so perfectly plain, as to demonstrate that this writ of error and appeal have been taken only for the purpose of delay.

It appears clearly by the undisputed testimony in the case that these notes were transferred by Fitch to the Bank for value, two of

them after maturity, and one of them before maturity immediately upon its being made.

Pages 17, 18, 23, 24, 25, 31 and 32, 63, 64.

It appears further by Leland's own testimony that no agreement was ever made by Leland and Fitch that any account which Leland might have against Fitch should be set-off as payment against any of these notes.

In his direct testimony Leland says "When the book account reached a considerable sum I was to charge it against his notes and did so by refusing to renew said notes."

Page 90.

Upon his cross examination, the following question was put to him and the following answer given to it:

Q. "You state in your principal examination, that when the book account reached a considerable sum, you were to charge it against his notes, and did so by refusing to renew said notes. Was that a notion of your own or did you so expressly agree with John Fitch?"

A. "I did not so expressly agree with John Fitch, but I refused to renew notes, because said amount had reached a sum large enough to set-off or cancel amount of such notes."

Page 97.

It is clear therefore that the only question which could be raised by Leland before this Court, if the case were properly here, would be as to his right to set-off this account which he claimed against Fitch, against the two notes which had been transferred to the Bank after maturity.

As to the other note, the three thousand dollar note, there could be no question about that, because it was taken by the Bank in the usual course of business before maturity.

Now it is perfectly clear, that before the defenant Leland could claim any benefit, in this suit, as against the plaintiff, of any account or set-off which he might have against John Fitch, he must show to the Court that he was entitled in this suit to set off such account against the claim of the plaintiff on these notes.

As to the $3,000 note there could not be any pretense whatever that he had such right. This note the Bank discounted for Fitch immediately after its date, and gave him the money for it. It certainly is not necessary to cite any authority before this Court to prove that in the hands of the Bank no claim of Leland against Fitch could be set up as a defence against this note.

As to the other two notes the case is a little different. They were transferred by Fitch to the Bank after maturity, and therefore subject to all equities as defenses in the hands of the Bank, which existed as defenses against them in the hands of Fitch. But it was not pretended or claimed by Leland that he had any defense to interpose against them in the hands of Fitch, excepting only the mere claim of set off. He claimed that he had an account against Fitch for board, and wine and entertainment at his hotel, which he would have a right to set off against these notes in the hands of Fitch. For the purpose of this argument admit this to be true. No such right of set off existed against them in the hands of the Bank, although it took them after their maturity.

If this question is settled against the defendant, then his entire defence in both of these suits falls to the ground. Upon his own showing he has absolutely no defense whatever.

That no such right of set off existed against these notes in the hands of the Bank according to the well settled law and practice in New Jersey cannot admit of doubt, and requires no argument. I need only refer to the case of *Cumberland Bank* v. *Hann*, 3 Harrison, 222 (18 N. J. Law Rep.) and to the case of *Price* v. *Keene*, 11 Vroom, 332 (40 N. J. Law.)

The same rule prevails in England, and in many other of the American States, while in some of the States the practice is different.

2 *Daniel on Negotiable Instruments*, page 442-443.
2 *Randolph on Commercial Paper*, page 319, and cases there cited.

But it is not material to inquire what the practice is elsewhere, the settled law and practice in New Jersey furnishes the rule which is to govern the case.

The question is to be determined by the *lex fori*.

The authorities are uniform on this question. I cite some of them.

Story on Conflict of Laws, section 575.
Wharton on Conflict of Laws, section 788.
1 *Daniel on Negotiable Instruments*, page 847.
Edwards on Bills and Notes, page 79.
Bank of Galliopolis v. *Trimble*, 6 B. Mon., 599.
Mineral Point R. R. Co. v. *Barrows*, 83 Ill., 365.
Prichard v. *Norton*, 16 *Otto*, 129-133.

In the case in 16 Otto, Mr. Justice Matthews in delivering the opinion of the Court says: "The Court below in a cause like the present, in which its jurisdiction depends upon the citizenship of the parties, adjudicates their rights precisely as should a tribunal of the State of Louisiana according to her laws, so that, in that sense, there is no question as to what law must be administered."

If we needed any authority therefore, it is clear from this that in the present case the law of the forum, to be administered, was the law of New Jersey.

In the same case (16 Otto), which contains an elaborate discussion of the principles which are to regulate and control the action of the Courts in such cases, it is stated on page 133, that the law of the forum may admit, as a part of its domestic procedure, a set-off or compensation of distinct causes of action between the parties to the suit, though not admissible by the law of the place of the contract.

If it may admit such set off, as a part of its domestic procedure, it certainly may and must reject it when contrary to its practice and in violation of the settled principals of its jurisdiction and procedure.

Assuming, therefore, that this case is properly before this Court, for revision, either upon exceptions taken to the rulings of the Circuit Court, or upon a special finding by that Court, it seems to me that the questions of law upon which alone the plaintiff Leland can have any standing here, are so well settled against him as not to admit of any serious discussion or argument to the contrary. To my mind it amounts to a positive demonstration that both the writ of error and appeal were taken only for the purpose of the five years delay which

Leland has obtained, and therefore the judgment and decree should be affirmed with ten per cent. allowance for damages according to Rule 23, of this Court.

In this brief we have not analyzed the evidence nor discussed the question whether Warren Leland, Jr., had any just account or claim against John Fitch, which might have been set off against this demand, while in the hands of Mr. Fitch, because we have not deemed it at all essential so to do.

The solution of that question would depend entirely upon the weight and credit to be given to the testimony of these two persons, respectively, Fitch and Leland, which constitutes the greater part of the evidence in the cause. They directly and completely contradict each other in the most positive terms. Upon this part of the case then, if it be considered at all, the testimony of Leland should more than balance that of Fitch. If only of equal weight and credit, Leland would fail to establish his claim. This we confidently submit he has not done, and in any view of the case, this defense presented stands absolutely without any support.

JOHN LINN,
Counsel of Deft. in Error, and Respondent on Appeal.

Transcripts
&
Records
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L. Sale